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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SACRAMENTO

12
13 INDEPENDENT ROOFING
14 CONTRACTORS OF CALIFORNIA
15 UNILATERAL APPRENTICESHIP
16 COMMITTEE, an employee benefit plan
operating a State approved apprenticeship
training program,

17 Petitioner,

18 v.

19 California Apprenticeship Council and its
20 members, Max Turchen, Carole Cresci
21 Colbert and Brad L. Plueger, in their official
capacity,

22 Respondents,

23 and

24 10 Bay Area Counties and Southern
25 California Roofers and Waterproofers Joint
26 Apprenticeship Training Committee,

27 Real Parties in Interest.
28

) Case No.

) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) COMPLAINT FOR
) DECLARATORY RELIEF AND
) PETITION FOR WRIT OF
) MANDATE, PROHIBITION
) AND/OR OTHER APPROPRIATE
) RELIEF

) (Code of Civil Procedure §§ 1021.5,
) 1060, 1068(a), 1085(a), 1086, 1094.5,
) 1102)

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I. INTRODUCTION

In response to a State entity's flagrant and unconstitutional abuse of discretion, Petitioner Independent Roofing Contractors of California Unilateral Apprenticeship Committee ("IRCC") seeks a Peremptory Writ of Mandate to restrain Respondent California Apprenticeship Council ("CAC") and its members Max Turchen, Carole Cresci Colbert, Brad L. Plueger, Marvin Kropke, Gerrit Buddingh, Yvonne de la Pena, Bert Tolbert, Richard Zampa, Joannie Holmes, Lawrence Kay, William Callahan, Charles Burke, Dennis McEuen, Dennis Pearl, Victoria Morrow and Bob Balgenorth in their official capacity, from discriminating against hundreds of Californians on the basis of their residency, and from denying indenture and educational opportunities to potential apprentices statewide in violation of both California and federal law.

With no evidence in the administrative record before it to support the actions taken and in direct contravention of established Division of Apprenticeship Standards' ("DAS") policy, Respondent CAC's members have failed to follow the plain meaning of the language found in DAS' governing regulations, as well as the federal mandate to increase apprenticeship training, 29 CFR 29 et seq., in an attempt to block the lawful geographic expansion of non-union apprenticeship program in pursuit of their own private purpose, rather than a public good. Real Parties in Interest 10 Bay Area Counties and Southern California Roofers and Waterproofers' Joint Apprenticeship Training Committee ("Real Parties") are union apprenticeship committees fighting to keep IRCC from expanding in an illegal attempt to monopolize the apprenticeship market. Petitioner IRCC is appealing from a final administrative decision of the CAC, which decision was adopted on July 26, 2001. This writ further seeks to force Respondent to follow the Administrative Procedures Act (Government

1 Code sections 11340 et seq.) (hereinafter "APA") in all respects as to its own procedures
2 governing appeals.

3
4 This case presents issues of urgent importance to potentially hundreds of apprentices
5 throughout the State of California. For these reasons, the Court should issue a Peremptory
6 Writ mandating that Respondent CAC reinstate the lawful decision of the Administrator of
7 DAS, follow the APA, and to cease and desist prosecuting IRCC in any proceeding for
8 following the direction of the DAS allowing IRCC to recruit in the additional counties that
9 were added pursuant to the DAS-24s submitted in 1998.

10 II. STATEMENT OF FACTS

11
12 The State agency responsible for administering apprenticeship is called the Division of
13 Apprenticeship Standards, headed by the Chief of DAS. The DAS is part of the Department
14 of Industrial Relations, and the Director of Industrial Relations is also the "administrator of
15 apprenticeship" under California Labor Code section 3072. Any party aggrieved by the
16 decision of the DAS or the Administrator of Apprenticeship may appeal to the California
17 Apprenticeship Council ("CAC"), a group of private citizens appointed by the Governor, the
18 majority of whom are either Union representatives or employer representatives, as well as a
19 few "public representatives" who are neither. California Labor Code section 3070.¹

20 The IRCC's Inception

21
22 IRCC is the sponsor of an apprenticeship program for training apprentices in the
23 roofing trades craft under the instructional supervision of the California Department of
24 Education and with on-the-job training in accordance with applicable federal and California
25 apprenticeship criteria. Because IRCC members are not party to a collective bargaining
26

27 ¹ At the July 26, 2001 CAC meeting at issue here, one voting "public member" was in fact an employee of a
28 private sector labor organization, thus violating the literal language as well as the intent of the Labor Code.

1 agreement with any labor organization, initially the DAS and later the California
2 Apprenticeship Council refused to approve the IRCC apprenticeship program on the pretext
3 that it would adversely impact existing programs.² After several years of litigation, DAS and
4 CAC were ordered by the California Supreme Court to allow creation of non-union
5 apprenticeship programs and to cease discrimination against them. See, *Southern California*
6 *Chapter of the Associated Builders & Contractors v. CAC, et al*, 4 Cal.4th 422 (1992). A
7 copy of the original 1991 IRCC apprenticeship standards approved by the State of California
8 and the DAS is attached hereto as **Exhibit 1**.³

10 Despite this Court order, the CAC has only grudgingly accepted non-union programs
11 and has conspired to find ways to limit and inhibit non-union programs from functioning to
12 their maximum potential rather than fulfill its statutory commitment to provide the most
13 training for the most people. To stop these non-union programs, the DAS and California
14 Apprenticeship Council originally tried to create exclusive licenses for existing union
15 programs in order to block new programs under former 8 CCR 212.2. In 1992, the California
16 Supreme Court declared such restrictive licensing unconstitutional and ordered DAS to follow
17 only those rules for apprenticeship program qualification adopted by the Federal Bureau of
18 Apprenticeship and Training pursuant to the National Apprenticeship (Fitzgerald) Act, 29

21
22 ² Before the California Supreme Court invalidated the "adverse impact" requirement, the CAC used the
23 following "catch 22" logic to deny approval to all non-union programs: A new program would either be
24 different than an existing union program, in which case the CAC said it adversely impacted the existing program
25 by lowering the standards for training, or the new program would be identical to the existing program, in which
26 case the CAC said the new program adversely affected the existing program by being duplicative or repetitive
and competing for scarce resources. In either case, no new program could ever be approved unless the existing
program consented, and no existing union program would ever consent to a non-union program operating in its
geographic area. The CAC's new "geographic restriction" is just a reversion to the old unconstitutional
restrictions on the growth of non-union programs for the private benefit of existing programs rather than the
public good of all California workers.

27 ³ The IRCC apprenticeship standards were signed and approved by DAS Chief in 1991, but because of ensuing
28 litigation, it was not until 1993 that the program actually began functioning.

1 USC 50, and federal regulations at 29 CFR 29 et seq. *Id.* The federal Fitzgerald Act
2 encourages employers and associations to form and grow apprenticeship programs, and has no
3 geographical limitation on the operation of any approved apprenticeship program.⁴
4

5 California requires any apprenticeship program to adopt an affirmative action
6 requirement to prevent discrimination against minorities. These affirmative action programs
7 were mandated because union programs had a history of limiting enrollment and denying
8 acceptance to minority workers. See, e.g. *United States v. Local Union No. 3, International*
9 *Union of Operating Engineers*, 1972 U.S. Dist. LEXIS 12709 (1972). Although there is no
10 documented evidence of any of the California non-union programs engaging in such unlawful
11 discriminatory behavior, and thus no justification for any legally mandated affirmative action
12 requirements by Petitioner, whose membership is over 70% minority (mostly Hispanic),
13 Petitioner IRCC submitted an affirmative action program as an addendum to its 1991 initial
14 standards.⁵ This affirmative action program included goals for hiring minorities and women,
15 based upon a statistical survey of the ethnic composition of certain California counties from
16 which the program was initially expected to recruit apprentices.
17
18

19 California law has never previously contained any geographical limitations on the
20 operation of any apprenticeship program, nor a residency requirement for the indenture of
21 apprentices. As programs change to provide apprenticeship opportunities to employees in
22

23 ⁴ Indeed, for a regulation to contain such a limitation would constitute a residency requirement, in violation of
24 the Constitutional right to travel. See *Zobel et ux. v. Williams, et al.*, 457 U.S. 55 (1982). Petitioner believes
25 access to knowledge is also a fundamental right under the California Constitution and the First Amendment to
26 the Federal Constitution.

27 ⁵ Unlike union programs, non-union programs like the IRCC typically adopt an open enrollment (Cal Plan 4)
28 system that makes discrimination, cronyism and "old boy network" basically impossible. Because it has an open
enrollment policy, the SMSA (Standard Metropolitan Statistical Area) contained in its standards is just for
measurement purposes and to target groups who may not be aware of the opportunity to apply, rather than to
limit selection or recruitment of those who apply. On the other hand, Union programs who do not use an open
enrollment selection, do have a significant risk of bias selection for limited apprenticeship positions.

1 new geographic locations and training areas in the construction industry who move as work
2 circumstances require, the DAS provides a form DAS-24, entitled "Revision of Approved
3 Standards" to allow for changes in the program, including a box to select for revision of area
4 and for listing new geographic areas for the affirmative action requirements. A DAS-24 form
5 may not be used for submission of a new program, only for changes to an existing program.
6 See, IRCC DAS-24 approved by DAS attached hereto as **Exhibit 2**, as an example of such
7 form.
8

9 In 1992, the IRCC program began accepting apprentices into the program from Santa
10 Clara County. In its decision of August 21, 1992, a copy of which is attached hereto as
11 **Exhibit 3**, the DAS Chief rejected the arguments of the Santa Clara and San Benito Counties
12 Roofing JATC, which were identical to those that Real Parties in Interest make here. There,
13 IRCC also requested that DAS allow it to expand its existing apprenticeship program and add
14 Santa Clara County to its geographical area of coverage and the DAS granted IRCC's
15 expansion request, in spite of arguments from the union programs that such an expansion
16 constituted a "new" program. The program continued without incident.
17

18 Geographical Area Of Operation

19 Like most other non-union apprenticeship programs, the standards of the IRCC
20 apprenticeship program contain no geographical limitation on training or recruitment, but
21 merely contain as an appendix, a geographical "standard metropolitan statistical area"
22 (SMSA) for purposes of collecting and comparing affirmative action achievement. This
23 SMSA was never intended to be a quota or limit on the activities of Petitioner, but merely a
24 rational basis for establishing a minority recruitment minimum goal. While union programs
25 exempt from federal anti-trust laws often "divide up the market" geographically, it would be a
26
27
28

1 fundamental antitrust violation for any non-union program, and for any agency acting for its
2 own purposes, to restrict competition by limiting the area from which any non-union
3 apprenticeship program may recruit or train. See, e.g., *Washington State Electrical*
4 *Contractors Ass'n v. Forrest*, 488 U.S. 806 (1988) (reversing antitrust immunity for price
5 fixing allegations against Washington State's Apprenticeship Council because of obvious
6 "private purposes" of attempt to exclude non-union programs from the market.)
7

8 Shortly after its initial approval, various non-union contractors approached IRCC to
9 train their employees statewide. Pursuant to direction by DAS, IRCC submitted various
10 approval forms over the years when it had occasion to amend and revise its apprenticeship
11 standards. If approved, these forms are to be signed off by a DAS consultant, an employee
12 and agent of the Respondent DAS. After this takes place, the forms are forwarded to the DAS
13 Chief. There is a line for the signature of the Chief, indicating approval of the proposed
14 changes.
15

16 The Present Issue

17 In August and December, 1998, IRCC submitted two forms entitled "Revision of
18 Approved Standards", commonly known as DAS-24s, for the inclusion of the California
19 Counties of El Dorado, Fresno, Los Angeles, Orange, Kern, Placer, Stanislaus, Tuolumne and
20 Yolo Counties, to reflect the fact that it was seeking to increase the number of counties
21 covered by its standards. These additions to IRCC's geographic training area were submitted
22 in response to the petitions of interested roofing contractors in these areas who had contacted
23 the IRCC as a recognized provider of craft training for roofing mechanics and who would not
24 participate in union sponsored programs. At the request of the DAS, IRCC submitted its
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1 revisions in good-faith and with the full assistance and support of the Division of
2 Apprenticeship Standards.

3
4 At the time, IRCC was assured that submission of a DAS-24 Form (with revised
5 affirmative action goals for the recruitment of women and minorities within the new areas)
6 was all that was required to effect these changes, and that a mere expansion of training area
7 did not constitute a "new program," in keeping with the DAS' decision in 1992 that allowed
8 IRCC to expand into Santa Clara County. The IRCC's DAS 24's were public documents
9 filed with a State agency. IRCC did nothing to conceal its revision of standards, and there is
10 no record evidence that the Real Parties were in fact unaware of the IRCC operations in these
11 new counties at the time the revisions were submitted. The Chief of DAS, indicating her
12 approval of the revised standards, signed the forms. See Exhibit 2.

13
14 As of 1993, apprenticeship program standards were required to contain, *inter alia*, a
15 statement of the "party or parties to whom the standards apply and the geographic area. . ." In
16 1993, an enforcement policy was issued by then-Chief DAS, Gail Jesswein, which, under a
17 section entitled "Geographic Area", stated, "... in existing standards, a statement of
18 geographic area for recruitment, and within which R&SI classroom training occurs, should be
19 updated when the area of those activities expands." (Emphasis added.) In 1995, the CAC
20 regulations were amended to require apprenticeship program standards to state "the parties to
21 whom the standards apply and the program sponsor's labor market area, as defined by Section
22 215 appendix 2(I), for purposes of meeting equal employment opportunity goals in
23 apprenticeship training." 8 CCR 212(b)(2).

24
25 As emphasized by Acting DAS Chief Rita Tsuda in her April 2, 1999 letter to the Real
26 Parties' counsel, attached as Exhibit 4:
27
28

1 Under the current regulations, however, the process to which you
2 refer, involving comment by existing programs, is **intended for use in**
3 **the approval of new programs, and is not required when programs**
4 **are amended.** Indeed, the standards that were the subject of the §212.2
5 process provide a method for amending the standards, and those
6 standards containing that method were approved by the CAC. Under
7 the standards approved by the CAC, amendments can be made by the
8 program, subject to approval of the Chief DAS. The standards do not
9 require CAC approval, nor do they imply that 212.2 must be must be
10 followed when an amendment is proposed.

11 *In the past, the Division has not applied the §212.2 process to the*
12 *amendments to standards. As you know, the CAC's rules and*
13 *regulations committee had been considering modifications to process*
14 *for amending standards, however the present regulations provide only*
15 *that the standards shall provide for "revising standards as needed."*
16 (Emphasis added.)

17 As is apparent from the language quoted above, the IRCC program was geographically
18 expanded in a manner accepted by the authorizing State agency, in keeping with the previous
19 expansion of 1993 into Santa Clara County that had also been approved and in keeping with
20 DAS policy.

21 Real Parties in Interest's Complaint

22 More than six months after the expansion of IRCC's operating area was approved,
23 Real Parties in Interest filed a Complaint against IRCC for recruiting outside the approved
24 area. The Complaint, DAS Case No. 99-07, is dated July 16, 1999. Real Parties filed the
25 Complaint based in part upon the Revision of Approved Standards forms that Petitioner filed
26 with DAS and that were signed and approved by the DAS Chief in Exhibit 2. The Complaint
27 alleged that that the expansion was actually a "new" program.

28 The Chief of DAS dismissed the Complaint as being untimely because Real Parties
had waited over 6 months to bring it. The DAS had already found that IRCC's expansion was
not a new program, according to the letter of DAS Chief Rita Tsuda quoted above at Exhibit

1 4, and thus no existing program had standing under 8 CCR 212.2(f), to challenge the decision
2 of the DAS to allow the change in the affirmative action statistical measurement area. Even if
3 the IRCC expansion were a new program, which it was not, there was no proof that Real
4 Parties did not know of IRCC's operations in these counties for more than the thirty day
5 period to appeal new program approvals provided in 8 CCR 212.2. Finally, the only remedy
6 for a program that is operating in a larger geographic area than allowed in its statistical model
7 for affirmative action is to amend the statistical model to reflect the area in which the program
8 is actually operating, so that the measurement of affirmative action can be accurate. In fact,
9 the IRCC program has over 70% minority participation, mostly Hispanic, and has no history
10 of discrimination to justify any imposition of affirmative action goals anyway.
11

12
13 CAC's Erroneous Decision From Which IRCC Appeals By Writ

14 CAC found, in direct contravention of the DAS, that the DAS-24s signed by the DAS
15 Chief approving the addition of new counties to the coverage of the apprenticeship standards
16 was really a new program and not an expansion of an already existing program. In addition,
17 CAC wants to hold mere expansion of an existing program to the requirements of 8 CCR
18 212.2(f) which governs new programs. This section requires that "Upon receipt of the
19 proposed standards of a program, the Chief shall serve a copy of the proposed standards and
20 any supplement thereto on the sponsor of each existing program in the apprenticeable
21 occupation in the labor market area of the program, as defined by Section 215. Each such
22 existing program may submit comments on the proposed program within thirty days after
23 receipt of the completed standards. The Chief may, in his or her discretion, consult with such
24 existing program concerning the proposed program." These regulations apply to *new*
25 programs, and do not apply to the expansion of *existing* programs.
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1 Real Parties and now CAC want to read the two DAS-24 forms signed by the DAS
2 Chief as creating a new program and not merely revising an existing program, *contrary to the*
3 *plain wording on the form and the DAS Chief's interpretation of the law and DAS policy*, and
4 are in fact seeking to have the IRCC apprenticeship program decertified and penalized on that
5 basis. Because CAC agreed with Real Parties that the DAS-24s allowing expansion of the
6 geographical area of operation in effect creates a new program, CAC overturned the DAS
7 decision that Real Parties' Complaint was untimely under 8 CCR 201(a), which has a 30-day
8 statute of limitations in which to bring a Complaint. CAC reinstated the Complaint and
9 proceeded to find DAS at fault for not holding Petitioner IRCC to the requirements of 8 CCR
10 212.2(f), which apply only to new programs. Petitioner's expansion into the additional
11 counties has been revoked and CAC has ordered DAS to investigate IRCC, when IRCC was
12 only following DAS instruction.

13
14
15 **Basis for Relief**

16 Petitioner brings this petition under several California Code of Civil Procedure
17 sections. Code of Civil Procedure section 1060 confers the right to sue for declaratory relief
18 when there is a present and actual controversy between the parties. Section 1085(a) notes that
19

20 "A writ of mandate may be issued by any court, except a municipal court,
21 to any inferior tribunal, corporation, board, or person, to compel the
22 performance of an act which the law specially enjoins, as a duty resulting
23 from an office, trust, or station, or to compel the admission of a party to
24 the use and enjoyment of a right or office to which the party is entitled,
25 and from which the party is unlawfully precluded by such inferior tribunal,
26 corporation, board, or person."

27 Section 1086 says "The writ must be issued in all cases where there is not a plain,
28 speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the
verified petition of the party beneficially interested."

1 Section 1094.5(a) of the Code of Civil Procedure states that "Where the writ is issued
2 for the purpose of inquiring into the validity of any final administrative order or decision
3 made as the result of a proceeding in which by law a hearing is required to be given, evidence
4 is required to be taken, and discretion in the determination of facts is vested in the inferior
5 tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a
6 jury."

7
8 Section 1102 of the Code of Civil Procedure reads that a "writ of prohibition arrests
9 the proceedings of any tribunal, corporation, board, or person exercising judicial functions,
10 when such proceedings are without or in excess of the jurisdiction of such tribunal,
11 corporation, board, or person."

12
13 In addition, CAC, as a California State agency, is subject to the Administrative
14 Procedures Act (Government Code §§ 11340 et seq.) and the due process safety mechanisms
15 therein. Petitioner IRCC points out that, significantly, the CAC's decision is based on
16 information that was not included in the administrative record before it on appeal.
17 Specifically, "the Director did not make a finding about whether IRCC had recruited
18 apprentices outside its original operating area. The Council *assumes* that IRCC has done so."
19 (Emphasis added.) See Exhibit 5. The CAC has assumed facts that are very harmful for
20 IRCC—facts which were not even proven at the administrative level nor a part of the record
21 on review. This is a flagrant abuse of discretion, and a violation of the APA, the rules
22 governing the CAC's duties concerning an appeal, and notions of due process.

23
24 The issues presented in this writ are manifold: whether the CAC's overturning of the
25 DAS approval of IRCC's expansion is a prejudicial abuse of discretion and a violation of
26 Constitutional due process; whether the Real Parties in Interest's Complaint is untimely and
27

1 therefore barred by the statute of limitations in 8 CCR 201(a) as found by the Administrator in
2 the decision at the DAS level; whether the CAC is administratively estopped from prohibiting
3 Petitioner from recruiting apprentices outside its previously approved area when DAS
4 specifically advised Petitioner by signing the DAS-24 allowing for expansion that it was fine
5 for Petitioner to do so; whether the CAC's decision on the merits of the Complaint—when the
6 only issue appealed by Real Parties and therefore briefed by Petitioner was the statute of
7 limitations issue—violated Petitioner's right to due process; whether the restriction on the
8 right to travel and the residency requirements that CAC seeks to impose on IRCC are
9 unconstitutional; and whether the CAC's assumption of facts not present in the record, to the
10 detriment of Petitioner, violated Petitioner's right to due process and the requirements of 8
11 CCR 203(a)(2).
12

13
14 Absence of Other Remedies

15 Petitioner has no adequate remedy other than the relief sought through this Petition as
16 the final administrative decision of the CAC can only be appealed through writ. Until
17 Respondent CAC recognizes that the DAS-24 is a form for expansion of existing programs
18 only and not creating new programs and the CAC is forced to follow the rules of operation
19 that exist for it, Petitioner will continue to be subjected to these types of actions. Moreover,
20 Petitioner cannot force Respondent CAC to follow its own agency guidelines as to the proper
21 conduct of appeals and must turn to this Court for relief. Further, the Complaint itself is
22 clearly time-barred under 8 CCR 201(a) and Petitioner must seek redress from this Court
23 since the CAC has declined to obey the APA and relevant CCR provisions. Finally,
24 Petitioner is being harmed every single day this erroneous decision by the CAC is allowed to
25 stand, in that Petitioner is now prohibited from indenturing apprentices or operating outside of
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1 its old boundaries. "[W]here a significant issue of law is raised, and where resolution of the
2 issue in favor of the petitioner would result in a final disposition as to that party, review by
3 writ is appropriate." *Curry v. Superior Court*, 20 Cal.App.4th 180, 183 (1993).
4

5 A determination by this Court on these issues is necessary and will finally dispose of
6 all issues.

7 **Irreparable Injury**

8 For all the reasons set forth above, failure to overturn the CAC's decision, to force the
9 CAC to acknowledge that the plain language on the DAS-24s clearly pertains only to
10 expansion and not creation of new programs, and to abide by the law will continue to subject
11 Petitioner to actions of this kind. Additionally, CAC cannot restrain competition by limiting
12 the area from which any non-union apprenticeship program may recruit or train. This is a
13 residency restriction and a restriction on the Constitutional right to travel. See *Zobel et ux. v.*
14 *Williams, et al.*, 457 U.S. 55 (1982). This will cause Petitioner irreparable injury in the sense
15 that Complaints can be filed against Petitioner seeking decertification of Petitioner's
16 apprenticeship program, Petitioner will be unable to indenture apprentices who do not live in
17 the original program's approved counties and Petitioner simply cannot force CAC to follow
18 the law. Petitioner respectfully requests that this Court resolve the issues between the parties.
19
20

21 **IV. ARGUMENT**

22 **A. The CAC's Decision Should Be Overturned Because The DAS Was**
23 **Correct That Petitioner's DAS-24s Only Sought Expansion Of An Already**
24 **Existing Program And Did Not Constitute A New Program For Purposes**
of 8 CCR 212.2.

25 The CAC's decision to overturn the DAS approval of IRCC's DAS-24s is an abuse of
26 discretion not supported by substantial evidence and should be stricken for that reason. The
27 only reason given in the CAC's decision that the IRCC expansion was a "new program" was
28

1 that "the record establishes that the 1998 revisions to the IRCC standards constituted a "new"
2 program because the revisions changed the geographic area of the program." This is circular
3 and nonsensical, because 'expansion' is by definition "enlargement"; one cannot enlarge
4 something that did not previously exist. One expands an existing program, not a new
5 program. There is absolutely no statutory or regulatory support for the conclusion that every
6 expansion must be a new program, which is no doubt why the CAC's decision fails to cite any
7 sound legal or statutory reasoning on this point. The CAC's decision is doubly erroneous
8 because IRCC has expanded in the past into other counties and *that* expansion was not dubbed
9 a "new" program. See Exhibit 3.

10
11 In examining a DAS-24, such as the one attached as Exhibit 2, it is immediately
12 apparent that the form is only for *revision* of existing apprenticeship programs, and is not the
13 proper form to be submitted for a new program seeking DAS approval. The DAS-24 form is
14 a form used by the Division of Apprenticeship Standards for years, and approved for use in
15 amending existing apprenticeship program standards to include new information. In Section
16 5, there are eight boxes for actions that an existing program seeking revisions can take. One
17 of these is a box that the program sponsor is to check labeled "Revision of Area" for adding
18 or deleting areas to be covered by the apprenticeship program. Further, the title on the DAS-
19 24 is "Revision of *Approved Standards*." (Emphasis added.) The title makes it quite clear;
20 one cannot revise something that does not yet exist. Expansion of an already existing and
21 approved apprenticeship program is a completely different animal than creation of a brand
22 new program, as common sense implies. Further, DAS would not provide a means to expand
23 a program's operating area through the DAS-24 if such were not allowed. DAS was able to
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1 grasp this elementary distinction, a distinction that was somehow completely lost upon the
2 CAC.

3
4 Additionally, apprenticeship programs already in existence are required, from time to
5 time, to revise certain aspects of the program, such as wages that increase, selection
6 procedures that change, and so on. The proper form to use is the DAS-24, as seen in Exhibit
7 2, Section 5. Petitioner has submitted such DAS-24s in the past, when it needed to update
8 aspects of its program, such as changing work ratios, a box that is checked in Exhibit 2. Real
9 Parties in Interest did not complain when any *other* DAS-24s—such as those updating
10 wages—were submitted by Petitioner IRCC, and did not complain that such revisions to the
11 program constituted a new program. Such changes were obviously just changes that needed
12 to be made as required by law, based upon new circumstances, such as wage increases. The
13 same applies for an area change. It is a simple revision and does not constitute a new
14 program. Here, IRCC *only sought to add an additional seven counties*; this is clearly only a
15 change to an existing program and is not a new program to be subjected to the new program
16 rules found in 8 CCR 212.2. The Chief, DAS was able to understand this and approved the
17 expansion of IRCC's existing apprenticeship program on this basis and in accordance with
18 DAS policy. CAC found this proposition incomprehensible, or at the very least, sought to
19 illegally restrain competition by limiting the area from which a non-union apprenticeship
20 program may recruit or train.

21
22
23 Petitioner points out with particular interest the fact that in 1992, the IRCC program
24 began accepting apprentices into the program from Santa Clara County. In its decision of
25 August 21, 1992, a copy of which is attached hereto as Exhibit 3, the DAS Chief rejected the
26 arguments of the Santa Clara and San Benito Counties Roofing JATC which were *identical* to
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1 those that Real Parties in Interest make here. There, IRCC also requested that DAS allow it to
2 expand its existing apprenticeship program and add Santa Clara County to its geographical
3 area of coverage. The DAS allowed the expansion to take place, over the objections of the
4 union apprenticeship program. The DAS Chief did not find that the request to add another
5 county to the IRCC's area was creating a new program; rather, the DAS Chief followed
6 agency guidelines and found that the expansion was just that, an expansion, and allowed it to
7 take place.
8

9 For the aforementioned reasons, the decision of the CAC overturning the DAS
10 approval of the additional counties to IRCC's geographical area of operation should be
11 overturned itself as a prejudicial abuse of discretion. The decision of the Chief of DAS
12 should be reinstated. The CAC has no statutory or legal basis for determining that adding
13 additional counties to IRCC's operating area creates a new program—which is clear from its
14 decision which notably fails to cite *any* supporting authority. The IRCC's DAS-24 forms
15 should be approved as seeking mere revisions to an apprenticeship program already in
16 existence.
17

18
19 **B. Even Though IRCC's Request For Expansion Did Not Constitute A New**
20 **Program, Real Parties in Interest's Complaint Is Still Time-Barred.**

21 According to 8 CCR 201(a), a complainant has *only 30 days* to bring a complaint for
22 violations of: "the apprenticeship sections of the Labor Code, California Code of Regulations,
23 apprenticeship standards, apprenticeship agreements, and the rules, regulations or policies
24 established by an apprenticeship program sponsor." Real Parties' Complaint alleges
25 violations of apprenticeship standards and the rules, regulations and policies established by
26 IRCC, the program sponsor. Real Parties thus had 30 days from the occurrence of any of
27 these actions to file a Complaint.
28

1 A review of the Complaint and supporting documentation sent to DAS by Real Parties
2 shows that the Complaint is based on events that took place in August and December, 1998.
3 And yet the Complaint was filed much later than 30 days from either August or December,
4 1998, and indeed was not filed until July 16, 1999. Real Parties had notice of the requested—
5 and approved—expansion as early as February 19, 1999. The CAC decision notes that “On
6 February 19, 1999, an attorney for appellants [Real Parties in Interest here] wrote DAS a letter
7 complaining of “...a revision to the IRCC standards permitting the IRCC program to function
8 state-wide...” See Exhibit 5. And yet, Real Parties still waited an additional *five months*
9 before filing the actual Complaint with the DAS. Therefore the Complaint was untimely and
10 barred by the statute of limitations found in 8 CCR 201(a). For some reason, perhaps in an
11 attempt to justify its decision to penalize a non-union program, CAC found that the February
12 19, 1999 letter sent by Real Parties’ attorney counted as notice that Real Parties had a
13 complaint. This avails Real Parties not, for even if the letter were deemed to be a complaint
14 comporting with the guidelines found in Title 8 of the California Code of Regulations for such
15 complaints—which it does not—February 1999 is still more than 30 days from December
16 1998, the event complained of by Real Parties. As found by the DAS, the Complaint must be
17 dismissed in its entirety and the CAC decision should be overturned on this basis.

21 Statutes of limitations exist to protect “defendants from having to defend against stale
22 claims by providing notice in time to prepare a fair defense on the merits, and requiring
23 plaintiffs to diligently pursue their claims.” *Jolly v. Eli Lilly & Co.*, 44 Cal.3d 1103, 1112
24 (1988). Respondent CAC’s decision to give credence to a Complaint concerning events that
25 took place more than six months in the past is clearly untimely, and therefore an abuse of both
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1 its discretion and the law as found in the pertinent CCR sections and the APA. Petitioner's
2 rights have been abrogated and there is no remedy except by this Petition.

3
4 **C. A Writ Should Be Issued Against CAC For Prejudicial Abuse Of
Discretion And Lack Of Substantial Evidence To Support Its Decision.**

5 A writ should be issued against the CAC since it has acted outside the parameters of 8
6 CCR 203, which governs the appeals process to the CAC. 8 CCR 203 directs the CAC to
7 "review the entire record" but does not direct the CAC assume or invent information.
8 However, CAC flagrantly disregarded this most basic provision of *any* appeals process when
9 it noted in its decision that "the Director *did not make a finding* about whether IRCC had
10 recruited apprentices outside its original operating area. The Council *assumes* that IRCC has
11 done so." (Emphasis added.) See Exhibit 5. This is a clear violation of Petitioner's right to
12 due process, especially as there was no hearing before the CAC. The CAC then went on to,
13 on the basis of this assumed information, authorize DAS "to conduct an investigation of the
14 training, educating and employment of those apprentices" that the CAC "assumes" were
15 recruited.
16

17
18 This decision by the CAC is not based on any information found in the administrative
19 record before it on appeal, as is clear from the word "assumes." Furthermore, this finding is
20 not supported by substantial evidence in light of the whole record. For the CAC to have made
21 such an assumption is a clear prejudicial abuse of discretion and a violation of the most basic
22 notions of due process, as well as the rules surrounding the appeals process. Therefore, a writ
23 should be issued by this Court overturning the CAC decision in its entirety as an abuse of
24 discretion and reinstating the decision of the Administrator of DAS.
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1 D. A Writ Should Be Issued Against CAC For Its Illegal Attempts To Impose
2 Unconstitutional Restrictions On The Right To Travel And IRCC's Free
3 Speech Right To Recruit, As Well As Imposing A Residency Requirement.

4 As previously related, the CAC found that the two DAS-24 forms signed by the Chief
5 of DAS, which forms added more counties to IRCC's operating area, constituted a new
6 apprenticeship program and not an expansion of an existing apprenticeship program, contrary
7 to the plain wording on the forms and prior DAS interpretation of the law. The CAC cited no
8 regulation, rule, law or support for this decision, because indeed there is no support for this
9 outlandish proposition. The CAC then overturned the DAS Chief's previously granted
10 approvals for expansion.
11

12 The impact of this action by the CAC is enormous: apprentices outside the original
13 area of IRCC's program standards are no longer allowed to participate in the program nor is
14 IRCC allowed to indenture apprentices, based purely on their residency. For the CAC to do
15 this is a restriction on competition by limiting the area from which any non-union
16 apprenticeship program may recruit or train. This action is also a residency restriction and a
17 restriction on the Constitutional right to travel. See *Zobel et ux. v. Williams, et al.*, 457 U.S.
18 55 (1982).
19

20 In *Williams v. Fears* (1900) 179 U.S. 270, the right to travel was held to be one
21 protected by the Fourteenth Amendment as well as other provisions of the Constitution.
22 "Undoubtedly the right of locomotion, the right to remove from one place to another
23 according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free
24 transit from or through the territory of any State is a right secured by the Fourteenth
25 Amendment and by other provisions of the Constitution." *Ibid.* Again, in *Kent v. Dulles*,
26 357 U.S. 116, 127, (1958) freedom to travel was recognized as "an important aspect of the
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28

1 citizen's 'liberty.'" See also *Edwards v. California*, 314 U.S. 160, 177, 183 (1941) (conc.
2 opns. of Douglas, J. and Jackson, J.).

3 In the line of cases beginning with *Shapiro v. Thompson*, 394 U.S. 618 (1969), the
4 Supreme Court has considered the right to travel in the context of equal protection
5 challenges to state laws creating durational residency requirements as a condition to the
6 exercise of a fundamental right or receipt of a state benefit.
7

8 In *Shapiro*, where public assistance was refused to residents who had lived in the
9 jurisdiction for less than one year, the Court held that durational residence as a condition of
10 receiving public assistance constituted invidious discrimination between residents, and that
11 if a law had no other purpose than chilling the exercise of a constitutional right such as that
12 of migration of poor individuals into the jurisdiction the law was impermissible. *Shapiro* at
13 618, 627, 631. Further, "any classification which serves to penalize the exercise of [the
14 right of migration], unless shown to be necessary to promote a compelling governmental
15 interest, is unconstitutional." *Id.* at 634.
16

17 Moreover, the right of intrastate travel has been recognized as a basic human right
18 protected by article I, sections 7 and 24 of the California Constitution. *In re White*, 97
19 Cal.App.3d 141 (1979). There, the Court decided that a condition of probation which
20 banned a defendant convicted of prostitution from certain vicinities of the City of Fresno
21 should be modified to preclude an overly restrictive impact on the defendant's right to
22 travel. The court held that "the right to intrastate travel (which includes intramunicipal
23 travel) is a basic human right protected by the United States and California Constitutions as
24 a whole. Such a right is implicit in the concept of a democratic society and is one of the
25 attributes of personal liberty under common law. See, 1 Blackstone, Commentaries 134;
26
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28

1 U.S. Const., art. IV, § 2 and the 5th, 9th and 14th Amends.; Cal. Const., art. I, § 7, subd. (a)
2 and art. I, @ 24)" *Id.* at 148. In *White*, as in the early United States Supreme Court
3 cases, the court addressed a direct burden on travel.
4

5 The CAC's decision makes it illegal for IRCC to recruit and indenture apprentices
6 outside its original affirmative action area. This means that no potential apprentices can
7 move to any of the nine California Counties previously approved by DAS, or they will be
8 unable to enroll in IRCC classes, attend school or become indentured. This is a direct
9 burden on the right to travel.
10

11 The CAC has also ordered IRCC to stop recruiting in certain areas. This is a clear
12 violation of IRCC's First Amendment right to free speech. *Hunt v. Washington State Apple*
13 *Advertising Commission*, 432 U.S. 333 (1977).
14

15 As a direct and proximate result of this unconstitutional and erroneous ruling by the
16 CAC, IRCC has been injured in its ability to indenture apprentices for training and education
17 in the upcoming winter semesters of instruction, and unless the matter is resolved
18 immediately, IRCC and the apprentices who wish to join IRCC will be prohibited from
19 providing and pursuing such education based upon this unconstitutional residency restriction.
20

21 **E. CAC Violated The Public Meeting Laws And Basic Due Process By Failing**
22 **To Put The Proposed Decision In The Public View Before The Session Began**
23 **And By Substituting A "Private Party Representative" For A Public Member**
24 **Of The CAC For This Vote.**

25 Government Code sections 11120 et seq. require that decisions of public entities be
26 made available to the public. Further, basic due process requires that one be given a
27 *meaningful* opportunity to be heard, which must include notice. The CAC placed the tentative
28 decision of its three-member panel in the public information binders *after* the quarterly CAC
meeting had already begun, after 9:00 a.m. on July 26, 2001. After DAS employee Bryan

1 Goyette announced the IRCC decision had just been placed in the public information binder,
2 IRCC's counsel left the CAC meeting to learn, for the first time, of the proposed action of
3 taking away IRCC's right to recruit and indenture apprentices in El Dorado, Fresno, Kern,
4 Placer, Stanislaus, Tuolumne, Yolo, Los Angeles and Orange Counties, solely based upon the
5 place of residence, and the order restricting IRCC's federal First Amendment rights to
6 advertise, solicit and recruit for new apprentices in El Dorado, Fresno, Kern, Placer,
7 Stanislaus, Tuolumne, Yolo, Los Angeles and Orange Counties. This action of the CAC
8 violate Government Code sections 11120 et seq., the goal of which is to prohibit secret
9 actions at government meetings from taking place, and to force the government to operate in
10 the public eye.
11

12
13 In addition to IRCC having no advance notice of the decision of the three-member
14 panel of the CAC, one of the CAC members who voted on this issue was an official of the
15 Real Parties in Interest. At the CAC meeting, counsel for PHCC noted that four (4) of the
16 eleven (11) CAC members who were present to decide the subject appeals at that meeting
17 were members of the California Apprenticeship Coordinators Association ("CACA").⁶
18 CACA is a group of union apprenticeship programs who had intervened as amicus curiae in
19 support of Fresno JATC, the opponents of the PHCC, in the proceedings below at the
20 administrative level, and thus should not have voted because of an obvious conflict of interest.
21 Counsel for PHCC requested that the CACA members recuse themselves from the decision on
22 bias grounds due to their involvement matter in the administrative hearing below. The
23 members of CACA refused to recuse themselves and participated in a vote to uphold the
24 Director's decision as to both IRCC and PHCC. Such conflicts of interest do not comport at
25
26

27
28 ⁶ This Petition for Writ is being filed simultaneously with a Petition for Writ by PHCC-GSA-PUAC, and there
will be a motion for consolidation of both cases, to be heard together.

1 all with notions of due process, and for these reasons, the CAC decision should be overturned
2 as an abuse of discretion.

3
4 **F. The Unlawful Decision Of The CAC Should Be Stayed Pending
Determination Of This Writ.**

5 The decision of the CAC should be stayed pending the determination of this Petition
6 in that such stay will harm neither the CAC nor Real Parties in Interest, but a failure to stay
7 the CAC decision will irreparably harm Petitioner IRCC. There is no question of disputed
8 facts, and the law is clear. If the CAC decision is allowed to stand for even a month, many,
9 many potential apprentices will not be recruited, and will miss at least a semester of education
10 as well as perhaps their only opportunity to learn the roofing trade. On the other hand, there
11 is no harm to the CAC or the Real Parties in Interest if the IRCC is allowed to continue to
12 indenture apprentices pending this litigation. At worse, dozens of workers will receive an
13 education to which the CAC believes they are not entitled. There is no "competition"
14 between Petitioner and the Real Parties In Interest as there is no record evidence of any harm
15 to the Real Parties from the education of Petitioner's workers. Therefore the CAC decision
16 should be stayed pending the determination of this Petition.

17
18
19 **V. CONCLUSION**

20 Based on the foregoing, Petitioner IRCC has shown that the CAC's decision to
21 overturn the DAS approval of IRCC's two DAS-24 forms was a prejudicial abuse of
22 discretion not supported by the administrative record. The addition of new counties to
23 Petitioner's area of operation is expansion and does not create a new program. The CAC's
24 abuse of discretion extends to its decision which "assumes" facts that were not present in the
25 administrative record, to the severe detriment of Petitioner and in clear violation of due
26 process and 8 CCR 203(a)(2). Moreover, Real Parties in Interest's Complaint was untimely
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1 and in violation of 8 CCR 201(a). Petitioner respectfully requests that this Court immediately
2 issue a Peremptory Writ of Mandate requiring Respondent CAC to reinstate the decision of
3 the Chief of DAS and dismiss Real Parties' Complaint. Additionally, Petitioner respectfully
4 requests that this Court stay the decision of the CAC pending a determination of the merits of
5 this Petition. CAC does not subject union programs to such inconsistent procedures when
6 they amend their standards, and it should not do so here to this non-union apprenticeship
7 program.
8

9
10 Dated: August 16, 2001

Respectfully submitted:

THIERMAN LAW FIRM

11
12
13 By: 

14 Mark R. Thierman
15 Alice K. Conway

16 Attorneys for Petitioner
17 INDEPENDENT ROOFING
18 CONTRACTORS OF CALIFORNIA
19 UNILATERAL APPRENTICESHIP
20 COMMITTEE, an employee benefit plan
21 operating a State approved apprenticeship
22 training program
23
24
25
26
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08-15-01

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12 SUPERIOR COURT

13 COUNTY OF SACRAMENTO

14 PHCC OF THE GREATER SACRAMENTO)
15 AREA and PHCC OF THE GREATER)
16 SACRAMENTO AREA PLUMBERS)
17 UNILATERAL APPRENTICESHIP)
18 COMMITTEE,)

19 Petitioners

20 v.

21 CALIFORNIA APPRENTICESHIP)
22 COUNCIL,)

23 Respondent.

24 FRESNO AREA PLUMBERS, PIPE AND)
25 REFRIGERATION FITTERS JATC,)

26 Real Parties In Interest,)
27

Case No.

01CS01172

PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
(C.C.P. § 1094.5) OR MANDATE (C.C.P. §
1085)

28 TO THE ABOVE COURT:

29 Petitioners PHCC OF THE GREATER SACRAMENTO AREA (hereinafter "PHCC") and
30 PHCC of the THE GREATER SACRAMENTO AREA PLUMBERS UNILATERAL
31 APPRENTICESHIP COMMITTEE (hereinafter "PHCC-GSA-PUAC") petition this Court for a writ of
32 administrative mandamus under Code of Civil Procedure § 1094.5 or a writ of mandate under Code of
33 Civil Procedure § 1085, directed to Respondent CALIFORNIA APPRENTICESHIP COUNCIL
34 (hereinafter "CAC"), and by this verified petition allege as follows:

35 1. Petitioner PHCC is and, at all times mentioned in this petition, was a plumbing, heating

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1 and cooling contractor's association. Petitioner PHCC-GSA-PUAC is and, at all times mentioned in this
2 petition, was a plumbers' unilateral management apprenticeship committee, as defined by Labor Code
3 § 3075 and 8 C.C.R. § 205.

4 2. Respondent CAC is a state agency organized under the Division of Apprenticeship
5 Standards (hereinafter "DAS") whose members are appointed by the Governor of the State of California.
6 CAC is, and at all times mentioned in this petition was, required by Labor Code § 3071 to issue rules
7 and regulations establishing standards for the wages, hours and working conditions of apprentices in the
8 State of California. These regulations are codified at California Code of Regulations Title 8, Section
9 200, et seq.

10 3. DAS is a division of the Department of Industrial Relations (hereinafter "DIR") and is
11 headed by a Chief (hereinafter "Chief DAS") who serves at the pleasure of the Director of Industrial
12 Relations (hereinafter "the Director") and is appointed by the Governor. The Chief DAS also serves as
13 secretary to CAC. DAS is and, at all times mentioned in this petition, was required by Labor Code §
14 3073 to administer California apprenticeship law and to enforce apprenticeship standards for wages,
15 hours and working conditions.

16 4. Pursuant to 8 C.C.R. § 212, apprenticeship programs must be established by written
17 standards approved by the Chief DAS. Upon receipt of the proposed standards of a new program, the
18 Chief DAS is required by 8 C.C.R. § 212.2(f) to serve a copy of the proposed standards on the sponsor
19 of each existing apprenticeship program in the apprenticeable occupation in the labor market area of the
20 program for submission of comments and/or consultation with the Chief DAS. Pursuant to 8 C.C.R. §
21 212.2(j), the decision of the Chief DAS approving or disapproving a proposed program is final unless
22 an appeal is filed with CAC within thirty days following service of the decision. 8 C.C.R. § 212.2(k)
23 authorizes CAC to conduct a hearing on such appeals.

24 5. The Director serves as the Administrator of Apprenticeship (hereinafter "the
25 Administrator") and, in that role, is required to investigate, hold hearings and issue determinations
26 regarding apprentice disputes, including complaints against apprenticeship programs filed pursuant to
27 8 C.C.R. § 201. Pursuant to Labor Code § 3081 and 8 C.C.R. § 202, the Administrator is required to
28 hold evidentiary hearings in which interested parties are given an opportunity to present evidence and

1 oral or written arguments in support of their positions. Pursuant to Labor Code §§ 3082-3084 and 8
2 C.C.R. § 203, CAC is authorized to conduct hearings and render final decisions in appeals of
3 determinations by the Administrator.

4 6. Real Party in Interest, the Fresno Area Plumbers, Pipe and Refrigeration Fitters Joint
5 Apprenticeship and Training Committee (hereinafter "Fresno JATC") is and, at all times mentioned in
6 this petition, was a joint apprenticeship committee, as defined by Labor Code § 3075 and 8 C.C.R. §
7 205.

8 7. As of 1993, apprenticeship program standards were required to contain, inter alia, a
9 statement of the "party or parties to whom the standards apply and the geographic area. . ." In 1993, an
10 enforcement policy was issued by then-Chief DAS, Gail Jesswein, which, under a section entitled
11 "Geographic Area", stated, ". . . in existing standards, a statement of geographic area for recruitment,
12 and within which R&SI [related and supplemental instruction] classroom training occurs, should be
13 updated when the area of those activities expands." In 1995, the CAC regulations were amended to
14 require apprenticeship program standards to state "the parties to whom the standards apply and the
15 program sponsor's labor market area, as defined by Section 215 appendix 2(I), for purposes of meeting
16 equal employment opportunity goals in apprenticeship training." (8 C.C.R. § 212(b)(2)). The CAC
17 regulations specifically provide that an apprenticeship program is not restricted to a local area of
18 coverage and may provide for local, regional or statewide coverage in its standards. (8 C.C.P. § 218).

19 8. On December 20, 1993, DAS approved the apprenticeship standards of PHCC-GSA-
20 PUAC (hereinafter "1993 Standards"). The approval was appealed to CAC and, on July 29, 1994, CAC
21 ratified approval of Respondents' apprenticeship program, including the 1993 Standards. Article III of
22 the 1993 Standards approved by CAC, entitled "Organization", stated, "There is hereby established the
23 PHCC of the GREATER SACRAMENTO AREA PLUMBERS UNILATERAL APPRENTICESHIP
24 COMMITTEE . . . covering the California county of Sacramento . . ." Article VI, section 9 of the 1993
25 Standards, entitled "Responsibilities" provided as follows: "The responsibilities of the PUAC shall be
26 to: . . . adopt changes to these standards, as necessary, subject to the approval of the parties hereto and
27 the Chief of the Division of Apprenticeship Standards."

28 9. Starting in September, 1996, PHCC-GSA-PUAC sought to expand its labor market area,

1 initially, to Kern, Kings and Tulare counties and, ultimately, to all 58 counties in California. At all times
2 during PHCC-GSA-PUAC's geographical expansion effort, PHCC-GSA-PUAC was advised by
3 authorized DAS representatives regarding the proper procedures to follow in seeking expansion. A DAS
4 consultant informed PHCC-GSA-PUAC that it was DAS policy to process geographic area expansions
5 as revisions to existing programs, not as new programs, such that the notice and consultation provisions
6 of 8 C.C.R. § 212.2(f) did not apply. The Acting Chief of DAS confirmed and ratified this policy.

7 10. On January 22, 1998, the Acting Chief DAS approved the revised apprenticeship
8 standards of PHCC-GSA-PUAC (hereinafter "1998 Standards") without implementing the notice and
9 consultation provisions of 8 C.C.R. § 212.2(f). Article III of the 1998 Standards, entitled
10 "Organization", was revised to read, inter alia, "There is hereby established the PHCC OF THE
11 GREATER SACRAMENTO AREA PLUMBERS UNILATERAL APPRENTICESHIP COMMITTEE
12 . . . , operating in and covering the State of California . . . "

13 11. On or about February 24, 1998, two members of the Fresno JATC filed a Verified
14 Amended Petition for Writ of Mandate and Verified Amended Complaint for Declaratory and Injunctive
15 Relief and Restitution in the Sacramento County Superior Court (*Ward, et al. v. PHCC, et al.*, Case No.
16 97 CS 03102), alleging inter alia, that DAS approval of the 1998 standards was unlawful and seeking
17 a writ of mandate under Code of Civil Procedure § 1085 preventing Petitioners from operating their
18 apprenticeship program outside Sacramento County. The matter was assigned to the Honorable Ronald
19 B. Robie. Petitioners demurred to the writ of mandate claim on the grounds that, inter alia, plaintiffs
20 had failed to exhaust their administrative remedies. On June 26, 1998, Judge Robie granted Petitioners'
21 demurrer without leave to amend on the grounds that plaintiffs had failed to exhaust their administrative
22 remedies.

23 12. In September, 1998, Fresno JATC filed a Complaint Against Apprenticeship Program
24 with the Administrator of Apprenticeship against Petitioners alleging, inter alia, that DAS's January,
25 1998 approval of "new" apprenticeship standards for Petitioners covering all counties of the State of
26 California was improper and that, prior to the 1998 approval, Petitioners had operated outside
27 Sacramento County in violation of their own standards and in excess of the authorization granted by
28 DAS. Also in September, 1998, Fresno JATC filed an Appeal of Approval of Statewide Apprenticeship

1 Standards with CAC alleging, inter alia, that the regulatory procedures for obtaining DAS approval of
2 new apprenticeship programs, set forth in 8 C.C.R. section 212.2, applied to and were not followed in
3 connection with PHCC-GSA-PUAC's statewide expansion.

4 13. By letter dated July 21, 1999, the Director, Stephen J. Smith, acting in his role as
5 Administrator, set the Complaint Against Apprenticeship Program for hearing and identified the issues
6 to be tried as follows: "(1) whether expansion of the program statewide is effectively a new program;
7 and (2) the provision of related and supplemental instruction on a statewide basis."

8 14. By letter dated October 18, 1999, the California Apprenticeship Coordinators
9 Association (hereinafter "CACA"), a non-profit corporation consisting of representatives of the building
10 trades joint apprenticeship committees in California, requested permission to participate in the
11 administrative proceedings against Petitioners as amicus curiae in support of Fresno JATC. CACA also
12 had appeared as amicus curiae in support of plaintiffs in the prior civil action against Petitioners.

13 15. By letter dated October 19, 1999, the Hearing Officer designated by the Director to hear
14 Fresno JATC's Complaint requested that CAC delay acting on Fresno JATC's Appeal until after the
15 Director issued a decision with respect to their Complaint.

16 16. A two day hearing on Fresno JATC's Complaint was held on May 17, 2000 and July 19,
17 2000, wherein the parties entered oral testimony and documentary evidence into the record for the
18 Director's consideration. Counsel for CACA attended the hearing and sat at counsel table with Fresno
19 JATC's counsel but was not allowed to present or examine witnesses. Both parties submitted post-
20 hearing briefs to the Director. CACA also submitted a brief in support of Fresno JATC.

21 17. On December 11, 2000, the Director issued a decision (hereinafter "Director's decision",
22 Exhibit 1) finding, inter alia, that Petitioners violated their 1993 Standards by recruiting apprentices
23 outside Sacramento County on numerous occasions prior to 1998 and that the statewide expansion of
24 Petitioners' apprenticeship program constituted a "new" program. The Director held that DIR was
25 estopped from displacing non-Sacramento residents who had previously been enrolled, with DAS
26 approval, as apprentices in PHCC-GSA-PUAC's program. However, the Director ordered Petitioners
27 to (1) comply in all respects with the limitations set out in the Standards approved by CAC in July, 1994,
28 by carrying out all functions designated in those standards for the PUAC governing committee itself,

1 without delegating or ceding those functions to individual employers or sub-committees; (2) cease and
2 desist from any and all efforts to recruit apprentices from outside Sacramento County; and (3) cease and
3 desist from enrolling or registering as new apprentices persons who reside outside Sacramento County.
4 In paragraph 7 of the Analysis, the Director noted that "it is not appropriate for the Director to decide
5 here whether DAS acted properly in approving the new standards, which would authorize PUAC to
6 recruit and enroll apprentices statewide, without providing notice to the charging party and any other
7 plumber apprenticeship plan that might have been effected. Consideration of those questions is reserved
8 to CAC by Department regulation 212.2(j)."

9 18. Pursuant to 8 C.C.R. § 203, on or about December 26, 2000, Petitioners filed a Notice
10 of Appeal of the Director's decision with CAC, objecting to various factual findings, legal conclusions
11 and orders made by the Director and requesting an appeal hearing, including the opportunity to present
12 evidence that could not have been produced at the hearing before the Director and the opportunity to
13 present written arguments to CAC. Fresno JATC also filed a Notice of Appeal. By letter dated
14 December 27, 2000, Petitioners also requested a hearing and the opportunity to present evidence to CAC
15 pursuant to 8 C.C.R. §§ 212.2(k) and 203 in connection with Fresno JATC's Appeal of Approval of
16 Statewide Apprenticeship Standards that had been stayed pending resolution of Fresno JATC's
17 Complaint Against Apprenticeship Program.

18 19. By letter dated April 5, 2001, Petitioners were informed by CAC that their request for
19 a hearing had been denied, but that additional briefing would be allowed. Accordingly, on or about
20 April 27, 2001, Petitioners filed an Appeal Brief with CAC, as did Fresno JATC. CACA also filed a
21 Brief of Amicus Curiae in support of Fresno JATC.

22 20. CAC put the subject appeals on the agenda for its quarterly meeting on July, 26, 2001.
23 At that meeting, interested parties, including legal counsel for Petitioners, were given the opportunity
24 to address CAC regarding the appeals. At that time, counsel for Petitioners noted that four (4) of the
25 eleven (11) CAC members who were present to decide the subject appeals at that meeting were members
26 of CACA. Counsel for Petitioners requested that the CACA members recuse themselves from the
27 decision on bias grounds due to their involvement as amicus curiae in support of Fresno JATC. The
28 members of CACA refused to recuse themselves and participated in a vote to uphold the Director's

1 Decision.

2 21. On or about July 26, 2001, CAC issued a proposed decision upholding the Director's
3 decision in its entirety and holding that the revisions contained in the 1998 Standards constituted a
4 "new" program that was subject to the new program approval procedures set forth in 8 C.C.R. § 212.2.
5 Because DAS did not follow this procedure in its approval of the 1998 Standards, CAC overturned said
6 approval and ordered PHCC to operate its program only under its original 1993 Standards.

7 22. On or about August 3, 2001, Petitioners filed a Request for Clarification of Proposed
8 CAC decision. Specifically, Petitioners sought clarification as to the intended scope of CAC's order that
9 PHCC-GSA-PUAC operate its program only under its original standards and as to the effective date of
10 the decision in relation to CAC's order that PHCC-GSA-PUAC cease registering/enrolling apprentices
11 who reside outside Sacramento County.

12 23. CAC ignored Petitioners' Request for Clarification and issued its final decision
13 (hereinafter "CAC decision", Exhibit 2), which is identical to the proposed decision on, July 26, 2001.
14 The CAC Decision was mailed to PHCC-GSA-PUAC on August 8, 2001, and received by PHCC-GSA-
15 PUAC on August 9, 2001.

16 24. Labor Code § 3075, the statute that regulates new apprenticeship program approvals, was
17 amended in 2000 to severely restrict the establishment of new apprenticeship programs in the building
18 and construction trades where there is an existing program serving the same craft or trade in the effected
19 geographic area. (Labor Code § 3075(b)). As a result of that amendment, it would be impossible for
20 PHCC-GSA-PUAC to now obtain DAS approval of its statewide standards.

21 25. Also in 2000, CAC proposed to adopt the following language as part of its regulations
22 to implement the expanded scope of Labor Code § 3075: "For the purpose of Labor Code section
23 3075(b), a program sponsor shall be considered to have requested approval of a new apprenticeship
24 program: where the program sponsor requests initial approval of a program . . . or where the program
25 sponsor requests approval to change the program's labor market area, or geographic area of operation
26 to include a different labor market area, as defined by Section 215 appendix 2(d), that is not a reasonably
27 justified expansion of the existing labor market area."

28 26. CAC's decision is invalid under Code of Civil Procedure §§ 1085 and/or 1094.5 for the

1 following reasons:

2 A. CAC proceeded in excess of or without jurisdiction in that:

3 i. Article VI, Section 9 of the 1993 Standards, ratified by CAC in 1994, states that
4 one of the responsibilities of the PHCC-GSA-PUAC is to "adopt changes to these standards, as
5 necessary, subject to the approval of the parties hereto and the Chief of the Division of Apprenticeship
6 Standards." CAC thus divested itself of jurisdiction over changes to Petitioners' standards, instead
7 vesting that authority in the Chief DAS. In accordance with the CAC approved standards, PHCC-GSA-
8 PUAC submitted changes to its standards to the Chief DAS, which established state-wide recruitment,
9 and those changes were approved by the Acting Chief DAS, in January 1998. CAC lacks jurisdiction
10 to overturn that approval.

11 ii. The appeal procedures contained in 8 C.C.R. §212.2(j) apply only to appeals of
12 proposed new apprenticeship programs, not to amendments of existing programs, such as PHCC-GSA-
13 PUAC's; thus, CAC had no jurisdiction to entertain Fresno JATC's appeal under that section.

14 B. CAC failed to grant Petitioners a fair trial in that:

15 i. It denied Petitioners' request for an evidentiary hearing on their Appeal of the
16 Director's decision and on Fresno JATC's Appeal of Approval of Statewide Apprenticeship Standards;

17 ii. Members of CAC, who are also members of CACA, the organization that
18 appeared and submitted written briefs as amicus curiae in support of Fresno JATC throughout the
19 administrative process of the subject appeals, refused to recuse themselves from deciding said appeals
20 despite Petitioners' request that they do so due to their obvious bias and lack of impartiality.

21 iii. CAC failed to respond to Petitioners' Request for Clarification prior to serving
22 its final Decision on August 8, 2001.

23 C. CAC committed a prejudicial abuse of discretion as follows:

24 i. CAC failed to proceed in the manner required by law in that:

25 a. It denied Petitioners' request for an evidentiary hearing on their Appeal
26 of the Director's decision and on Fresno JATC's Appeal of Approval of Statewide Apprenticeship
27 Standards;

28 b. It violated due process by allowing biased members of CACA to decide

1 the subject appeals;

2 c. Its determination that the 1998 revisions to PHCC-GSA-PUAC's labor
3 market area constitute a "new" program subject to 8 C.C.R. § 212.2 is contrary to law, established DAS
4 policy and CAC regulations to treat such changes as revisions to existing programs.

5 d. Its ad hoc determination that the 1998 revisions to PHCC-GSA-PUAC's
6 labor market area constitute a "new" program subject to 8 C.C.R. § 212.2 was made without the benefit
7 of the requisite rule-making procedures contained in the Administrative Procedures Act ("APA") and
8 thus constitutes an illegal underground regulation in violation of the APA;

9 e. Its ad hoc determination that the 1998 revisions to PHCC-GSA-PUAC's
10 labor market area constitute a "new" program subject to 8 C.C.R. § 212.2 violates due process in that
11 the parties affected by this change in DAS policy were not given advance notice thereof;

12 f. Its determination that the addition of new sources of related and
13 supplemental instruction constitutes a "new" program subject to 8 C.C.R. § 212.2 is contrary to law,
14 established DAS policy and CAC regulations that apprentices can be employed and receive related and
15 supplemental instruction anywhere in the state, regardless of the geographic/labor market area stated
16 in existing standards, as long as the employer is signatory to the standards and a local education agency
17 is properly established to provide related and supplemental instruction in the remote area;

18 g. Its determination that the addition of new sources of related and
19 supplemental instruction constitutes a "new" program subject to 8 C.C.R. § 212.2 is contrary to Labor
20 Code § 3074 and the CAC regulations, which require the provision of related and supplemental
21 instruction for apprentices wherever they may be employed;

22 h. Its ad hoc determination that the addition of new sources of related and
23 supplemental instruction constitutes a "new" program subject to 8 C.C.R. § 212.2 was made without the
24 benefit of the requisite rule-making procedures contained in the Administrative Procedures Act ("APA")
25 and thus constitutes an illegal underground regulation in violation of the APA;

26 i. Its ad hoc determination that the addition of new sources of related and
27 supplemental instruction constitutes a "new" program subject to 8 C.C.R. § 212.2 violates due process
28 in that the parties affected by this change in DAS policy were not given advance notice thereof;

1 j. Its determination that changes in the apprentice wage structure constitute
2 a "new" program subject to 8 C.C.R. § 212.2 is contrary to law, established DAS policy and CAC
3 regulations to treat such changes as revisions to existing programs;

4 k. Its determination that changes in the apprentice wage structure constitute
5 a "new" program subject to 8 C.C.R. § 212.2 is contrary to the wage mandates contained in 8 C.C.R.
6 § 208;

7 l. Its ad hoc determination that changes in the apprentice wage structure
8 constitute a "new" program subject to 8 C.C.R. § 212.2 was made without the benefit of the requisite
9 rule-making procedures contained in the Administrative Procedures Act ("APA") and thus constitutes
10 an illegal underground regulation in violation of the APA;

11 m. Its ad hoc determination that changes in the apprentice wage structure
12 constitute a "new" program subject to 8 C.C.R. § 212.2 violates due process in that the parties affected
13 by this change in DAS policy were not given advance notice thereof;

14 n. Its determination that changes in the required number of hours of
15 instruction constitute a "new" program subject to 8 C.C.R. § 212.2 is contrary to law, established DAS
16 policy and CAC regulations to treat such changes as revisions to existing programs;

17 o. Its ad hoc determination that changes in the required number of hours
18 of instruction constitute a "new" program subject to 8 C.C.R. § 212.2 was made without the benefit of
19 the requisite rule-making procedures contained in the Administrative Procedures Act ("APA") and thus
20 constitutes an illegal underground regulation in violation of the APA;

21 p. Its ad hoc determination that changes in the required number of hours
22 of instruction constitute a "new" program subject to 8 C.C.R. § 212.2 violates due process in that the
23 parties affected by this change in DAS policy were not given advance notice thereof;

24 q. Its decision to prohibit PHCC-GSA-PUAC from recruiting or registering
25 new apprentices who reside outside Sacramento County is unlawful under California law and is
26 unconstitutional under the Privileges and Immunities Clause and the Commerce Clause of the United
27 States Constitution in that it discriminates on the basis of residence;

28 r. Its decision to prohibit PHCC-GSA-PUAC from enrolling or registering

1 new apprentices who reside outside Sacramento County is arbitrary and capricious and is not authorized
2 by statute or regulation;

3 s. Its decision to prohibit PHCC-GSA-PUAC from enrolling or registering
4 new apprentices who reside outside Sacramento County is contrary to the Director's own finding that
5 "neither Labor Code § 3078 nor § 3079 of the Labor Code places restrictions on the locations of the
6 parties to the agreement, at the time of signing of the agreement";

7 t. Its decision to prohibit PHCC-GSA-PUAC from enrolling or registering
8 new apprentices who reside outside Sacramento County is contrary to DAS policy and CAC regulations;

9 u. Its decision to prohibit PHCC-GSA-PUAC from posting certain
10 information on its WEB site and to provide program information to sources outside Sacramento County
11 violates the First Amendment.

12 v. Its decision to retroactively overrule established DAS policies is contrary
13 to the principals governing estoppel against government agencies.

14 ii. CAC's action is not supported by the findings in that:

15 a. It has failed to provide any statement of the factual and legal basis for
16 its decision that, contrary to established DAS policy, geographic area expansions constitute "new"
17 programs subject to 8 C.C.R. § 212.2;

18 b. It has failed to provide any statement of the factual and legal basis for
19 its decision that, contrary to established DAS policy, the addition of new sources of related and
20 supplemental instruction constitutes a "new" program subject to 8 C.C.R. § 212.2;

21 c. It has failed to provide any statement of the factual and legal basis for
22 its decision that, contrary to established DAS policy, changes in the apprentice wage structure constitute
23 a "new" program subject to 8 C.C.R. § 212.2;

24 d. It has failed to provide any statement of the factual and legal basis for
25 its decision that, contrary to established DAS policy, changes in the required number of hours of
26 instruction constitute a "new" program subject to 8 C.C.R. § 212.2;

27 e. It has failed to provide any statement of the factual and legal basis for
28 its decision to prohibit PHCC-GSA-PUAC from enrolling or registering new apprentices who reside

1 outside Sacramento County.

2 iii. CAC's findings are not supported by substantial evidence as follows:

3 a. CAC's finding that "The Director concluded that the 1998 revisions to
4 the PHCC standards constituted a 'new' program because the revisions changed the geographic area of
5 the program, added new sources of related and supplemental instruction, changed the apprenticeship
6 wage structure and reduced the required number of instruction. The Council agrees that the revisions
7 constituted a 'new' program for these reasons and for the additional reason that PHCC recruited
8 apprentices outside Sacramento County under a different name" is not supported by substantial evidence
9 in that:

10 i. The evidence establishes that it has been DAS policy since as early as
11 1993 to process geographic area expansions as revisions to existing programs, not new programs subject
12 to 8 C.C.R. § 212.2;

13 ii. The evidence establishes that it has been DAS policy that apprentices can
14 be employed and receive related and supplemental instruction anywhere in the state, regardless of the
15 geographic/labor market area stated in existing standards, as long as the employer is signatory to the
16 standards and a local education agency is properly established to provide related and supplemental
17 instruction in the remote area;

18 iii. The evidence establishes that it has been DAS policy to process changes
19 in apprentice wage structure as revisions to existing programs, not new programs subject to 8 C.C.R.
20 § 212.2;

21 iv. The evidence establishes that the required number of hours of instruction
22 were the same under the 1993 Standards and the 1998 Standards;

23 v. The evidence establishes that, on a single occasion in 1996, PHCC-GSA-
24 PUAC committee members located in the central valley used the name "Central California
25 Apprenticeship Program", without the knowledge or permission of PHCC-GSA-PUAC, to recruit
26 apprentices in that area and that PHCC-GSA-PUAC immediately stopped any use of such name and
27 recruitment activity once this conduct was brought to its attention by DAS.

28 b. CAC's finding that Petitioners made numerous or various attempts to

1 recruit apprentices outside Sacramento County prior to January, 1998, is not supported by substantial
2 evidence in that the evidence establishes, at best, three discreet incidents which hardly qualify as
3 numerous/repeated attempts to recruit apprentices: (1) the above "Central California Apprenticeship
4 Program" incident in 1996, (2) a meeting at a hotel in Tulare, California in 1996, and (3) PHCC's WEB
5 site.

6 c. CAC's finding that "Regulation 212.2 sets forth the procedure for
7 approval of new programs. DAS did not follow this procedure in its 1998 Approval of the PHCC
8 revisions. The approval therefore is overturned because it is invalid" is not supported by substantial
9 evidence in that the evidence establishes that it has been DAS policy since at least 1993 to process
10 geographic expansions as revisions to existing programs, not new programs subject to 8 C.C.R. § 212.2.

11 27. Petitioners reasonably relied on the representations of authorized DAS representatives
12 that the expansion of their program on a state-wide basis should be accomplished as a revision to their
13 standards, and not as a new program. Such reliance was to Petitioners' detriment inasmuch as CAC has
14 now overturned DAS's approval of its 1998 state-wide standards, and a subsequent change in law will
15 now prevent Petitioners from being able to expand their area of recruitment and training beyond
16 Sacramento County. Accordingly, the equitable doctrine of estoppel should be applied to nullify CAC's
17 Decision and reinstate Petitioners' standards approved by DAS in 1998.

18 28. Petitioners have exhausted the available administrative remedies required to be pursued
19 by them by engaging in the appeal processes mandated by 8 C.C.R. §§ 203 and 212.2(k); and having
20 received the final Decision of CAC.

21 29. Petitioners do not have a plain, speedy, and adequate remedy in the ordinary course of
22 law.

23 30. If Respondent's decision is allowed to be executed, Petitioners will be immediately and
24 irreparably harmed in that recently enrolled apprentices who reside outside Sacramento will be denied
25 apprenticeship training to the disadvantage of themselves, their employers, the building and construction
26 industry and society in general, due to the severe labor shortage existing in the plumbing trades. Also,
27 it will increase the per capita cost of training since training resources will not be fully utilized. Also,
28 it will adversely affect the ability of PHCC-GSA-PUAC to actively recruit and enroll women and

1 minorities, contrary to its affirmative action obligations under state and federal law. Further, imposition
2 of a stay is not against the public interest in that two of the fundamental policies underlying the federal
3 and state apprenticeship laws are to encourage the establishment of modern apprenticeship programs
4 and to safeguard the welfare of apprentices. A stay would promote the public interest by permitting the
5 continued enrollment and training of plumbing apprentices who are badly needed due to the severe
6 manpower shortages in the plumbing trades.

7 31. Petitioners are likely to ultimately prevail on the merits in that the CAC acted without
8 and in excess of its jurisdiction, failed to provide Petitioners with a fair trial, and prejudicially abused
9 its discretion by not proceeding in the manner required by law, by issuing a Decision not supported by
10 the findings, and issuing findings not supported by the evidence, all as set forth in this petition.

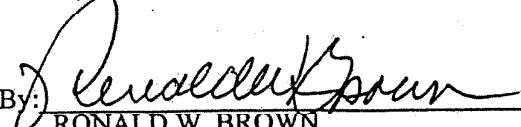
11 32. Petitioners are entitled to an award of their attorney's fees under Government Code §
12 800 and Code of Civil Procedure § 1021.5.

13 WHEREFORE, Petitioners pray that:

- 14 1. The Court stay the Decisions of the Administrator and CAC pending final judgment in
15 this action;
- 16 2. A peremptory writ of administrative mandamus or mandate issue, pursuant to Code of
17 Civil Procedure §§ 1094.5 or 1085, directed to Respondent, and compelling Respondent
18 to:
- 19 (a) Set aside its Decision dated July 26, 2001; and
20 (b) Restore DAS approval of Petitioners' 1998 Statewide Standards.
- 21 3. That Petitioners be awarded their costs and attorney's fees; and
22 4. The Court issue such other orders as it may consider just and proper.

23 Dated: August 15, 2001

COOK, BROWN & PRAGER, LLP

24
25 By: 
26 RONALD W. BROWN
27 CARRIE E. DOHNT
28 Attorneys for Petitioners PHCC and
PHCC-GSA-PUAC



Superior Court of California County of Sacramento

PROCEDURES FOR PROSECUTING PETITIONS FOR WRIT OF MANDATE

Filing the Petition for Writ of Mandate:

To file the Petition for Writ of Mandate, you must:

Step	Action
1.	File the Petition for Writ of Mandate and Civil Case Cover Sheet with the Legal Process Unit located in room 102 on the first floor of the courthouse.
2.	Pay the filing fee pursuant to Government Code Section 26820.4.
3.	Receive an Order Assigning a Judge for all Purposes from the Legal Process Clerk. <i>Note: The Order Assigning a Judge for all Purposes must be served on the respondent(s) with an endorsed copy of the Petition for Writ of Mandate.</i>

Setting a hearing on a Petition for Writ of Mandate:

If you are not seeking an Alternative Writ of Mandate or a Temporary Stay Order, you must:

Step	Action
1.	Prepare a Notice of Hearing, leaving the date and time blank.
2.	Deliver the Notice of Hearing to the department you have been assigned. The clerk will set the hearing and file the Notice of Hearing.
3.	The petitioner shall have the following served on the respondent(s) no later than the time allowed for filing the petitioners brief: <ul style="list-style-type: none">• An endorsed copy of the Notice of Hearing• A copy of this Procedure for Prosecuting Petitions for Writ of Mandate• A copy of the Order Assigning a Judge for all Purposes

**Alternative Writ
of Mandate:**

If you are seeking an Alternative Writ of Mandate, you must:

Step	Action
1.	Contact the assigned department for a hearing date.
2.	Notify the respondent(s) of the hearing date pursuant to California Rules of Court 379. <i>Note: The Court prefers 48 hours notice but will accept 24 hours notice in an emergency.</i>
3.	Bring the following documents with you to the hearing: <ul style="list-style-type: none">• Endorsed copy of the Petition for Writ of Mandate• Points and Authorities and any other supporting documents.• Order directing the Issuance of Alternative Writ of Mandate• Alternative Writ of Mandate. <i>Note: Do not include a space for the judge to sign on the Alternative Writ of Mandate. The clerk issues the Alternative Writ of Mandate.</i>

**Temporary Stay
Order:**

If you are seeking a Temporary Stay Order pending the hearing on the Petition for Writ of Mandate, you must:

Step	Action
1.	Contact the assigned department for a hearing date.
2.	Notify the respondent(s) of the hearing date pursuant to California Rules of Court 379. <i>Note: The Court prefers 48 hours notice but will accept 24 hours notice in an emergency.</i>
3.	Bring the following documents with you to the hearing: <ul style="list-style-type: none">• Endorsed copy of the Petition for Writ of Mandate.• Points and Authorities and any other supporting documents.• Stay Order.• Notice of Hearing. <i>If the Court grants the Stay Order:</i> <ul style="list-style-type: none">a. The judge will sign the Stay Order.b. The clerk will file the Stay Order and set a hearing on the Notice of Hearing for the Petition for Writ of Mandate. <i>If the Court denies the Stay Order:</i> <ul style="list-style-type: none">a. The clerk will set a hearing on the Notice of Hearing for the Petition for Writ of Mandate.

**ORDER ASSIGNING PETITION FOR WRIT OF MANDATE
TO ONE JUDGE FOR ALL PURPOSES**

CASE NAME: PHCC & THE GREATER SACRAMENTO AREA vs. CALIF. APPRENTICESHIP COUNCIL
CASE NUMBER: 01CS01172


This matter is hereby assigned to the **Honorable Ronald Robie, of Department 41** for all purposes.

All subsequent documents in this cause shall be filed with the clerk of Department 41 located on the fifth floor of the courthouse. These documents include, but are not limited to: Answers, Memoranda of Points and Authorities, Administrative Records, Demurrers, and any prehearing motions. For those documents requiring the payment of a fee (i.e. Answers, Motions, Demurrers), the fee shall be paid to the cashier located in Room 102 of the courthouse before filing in Department 41.

The petitioner in land use and environmental actions, at the time of the deadline for the response to the petition, shall prepare and lodge with the assigned department a notice form for the court's signature inviting mediation pursuant to Government Code section 66031, subdivision (b). A sample form may be obtained from the clerk in the assigned department.

A copy of this order shall be served on the respondent by the petitioner.

Dated: 8-15-01



Richard K. Park
Presiding Judge

If you have any questions, please refer to the Sacramento Superior Court Procedures for Prosecuting Petitions for Writ of Mandate available in Room 102 of the courthouse, as well as in the Department your case has been assigned.

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11 APPRENTICESHIP COMMITTEE

12 SUPERIOR COURT
13 COUNTY OF SACRAMENTO

14 PHCC OF THE GREATER SACRAMENTO)
15 AREA and PHCC OF THE GREATER)
16 SACRAMENTO AREA PLUMBERS)
17 UNILATERAL APPRENTICESHIP)
18 COMMITTEE,)

19 Petitioners

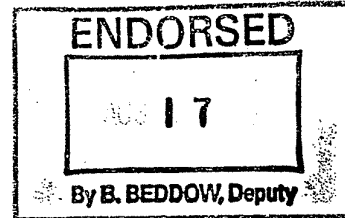
20 v.

21 CALIFORNIA APPRENTICESHIP)
22 COUNCIL,)

23 Respondent.

24 FRESNO AREA PLUMBERS, PIPE AND)
25 REFRIGERATION FITTERS JATC,)

26 Real Parties In Interest,
27
28



Case No. 01CS01172

**APPLICATION FOR TEMPORARY
STAY OF ADMINISTRATIVE DECISION
AND POINTS AND AUTHORITIES IN
SUPPORT**

Date: 08/21/01
Time: 1:30 p.m.
Dept.: 41

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1 Brown.

2 These decisions have the effect of nullifying the 1998 approval by the Division of
3 Apprenticeship Standards of the PHCC-GSA-PUAC state-wide apprenticeship program and limiting
4 recruitment and apprentice enrollments to Sacramento County alone. Petitioners contend that the CAC
5 Decision is not supported by substantial evidence or the law, and that it must be set aside.

6 Pending hearing on the Motion for Peremptory Writ of Mandate, Petitioners seek a stay from
7 the operation of the Decisions of the CAC and Administrator of Apprenticeship. A stay would not be
8 contrary to the public interest. Indeed, a stay would promote the public interest in fostering and
9 promoting the availability of apprenticeship training. Furthermore, immediate and irreparable harm
10 would result if a stay is not granted. Finally, even though such a showing is not required, there is a
11 strong likelihood of success in Petitioner's Petition for Writ of Mandate.

12 FACTS

13 In July 1994, the CAC approved PHCC-GSA-PUAC's application for a Plumbing
14 Apprenticeship Program. A true copy of the plan is attached to the Declaration of Brown, filed
15 herewith. The geographical area of the plan (program sponsor's labor market area for purposes of
16 meeting EEO goals) was Sacramento County. Following commencement of the program, PHCC began
17 receiving inquiries from numerous plumbing contractors outside of Sacramento County, expressing an
18 interest in employing and training apprentices enrolled in the program. PHCC consulted with the
19 Division of Apprenticeship Standards ("DAS"), the state agency charged with administering the
20 apprenticeship law and regulations in California. See Labor Code § 3073. The Acting Chief of DAS
21 advised PHCC that there was no geographic limitation on where apprentices could be employed and
22 trained, but that as the program expands the area within which recruitment and classroom instruction
23 takes place, the program's standards should be revised. DAS's advice was consistent with the well
24 established enforcement policy of DAS and CAC. See DAS Chief Jesswein's 1993 Memo, Section E,
25 attached to Brown's Declaration. Based on this advice, PHCC-GSA-PUAC began making plans for
26 expanding recruitment and classroom instruction to other counties where its member employers were
27 located. PHCC-GSA-PUAC contracted with Local Education Agencies ("LEA") in other counties, and
28 filed requests with DAS for revisions to its approved standards. This approval process was itself a part

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1 of PHCC's original standards approved by CAC: "The responsibilities of the PUAC shall be to: . . . 9.
2 adopt changes to these standards, as necessary, subject to the approval of the parties hereto and the Chief
3 of the Division of Apprenticeship Standards." See Article VI of 1994 Standards attached to the
4 Declaration of Brown. Ultimately, on January 22, 1998, PHCC's revisions to its standards providing
5 for state-wide recruitment and classroom instruction was approved by DAS. Since that time, PHCC has
6 enrolled apprentices who reside in many California counties and has established classroom instruction
7 facilities in the Counties of Alameda, Riverside, Kern, San Mateo, Contra Costa, Marin, and, of course,
8 Sacramento.

9 In February 1998, Real Party in Interest Fresno Area Plumbers, Pipe and Refrigeration Fitters
10 JATC ("Fresno Plumbers JATC") filed its First Amended Complaint for Declaratory Relief and Writ
11 of Mandate with this court, seeking to invalidate PHCC's program. Finding that Fresno Plumbers JATC
12 had failed to exhaust administrative remedies, the court stayed the action pending administrative review.

13 Fresno Plumbers JATC filed a complaint with the Administrator of Apprenticeship pursuant to
14 8 C.C.R. § 201, and simultaneously filed an appeal with the CAC pursuant to 8 C.C.R. § 212.2(j). As
15 required by the regulations, the Administrator directed that a hearing be held. He assigned one of his
16 own staff attorneys as the hearing officer (not an administrative law judge from the Office of
17 Administrative Law). The hearing took place over two days: May 17, 2000 and July 19, 2000.
18 Participating were DAS, PHCC, Fresno Plumbers JATC and Amici California Apprenticeship
19 Coordinators Association ("CACA"), appearing on behalf of Fresno Plumbers JATC. Following
20 briefing, the Administrator issued his Decision on December 11, 2000, a copy of which is attached to
21 the Declaration of Brown filed herewith.

22 During the period before the Administrator issued his Decision, PHCC-GSA-PUAC continued
23 to operate its program under the standards approved by DAS in January 1998. At the time of the
24 Decision, more than 400 apprentices were enrolled at various levels in the program, all looking forward
25 to journeyman certification upon completion of the four years of training.

26 The Administrator concluded, without citation to any statutory or regulatory authority, and
27 contrary to long established DAS policy that PHCC's expansion of area for recruitment and training
28 constituted a "new program" rather than a revision to an existing program. Thus, he concluded that

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1 DAS's approval in 1998 was invalid, for it did not conform with the requirements of 8 C.C.R. § 212.2
2 for new program approval (e.g., existing plans not consulted). As such, he ordered that PHCC comply
3 with its original 1994 standards, and not recruit apprentices outside Sacramento, and not enroll any
4 apprentice that did not reside in Sacramento. The Administrator conceded in his Decision that no
5 provision of law could be construed as limiting the residency of apprentices at the time of enrollment.
6 See fn.25.

7 Both PHCC and Fresno Plumbers JATC appealed the Administrator's Decision to the CAC,
8 pursuant to 8 C.C.R. § 203. Because of the appeal, the Administrator's Decision was not final, and the
9 final decision maker became the CAC. See Labor Code §§ 3081-3083. In the interim, before the CAC
10 issued its Decision, the PHCC-GSA-PUAC continued to sign up new apprentices for the upcoming
11 school year starting in September 2001, and DAS approved their enrollment. Out of approximately 100
12 apprentices so enrolled, about 85 do not reside in Sacramento County. There continues to be a high
13 demand for apprentices by PHCC member employers and all contractor members report being unable
14 to find a sufficient number of skilled plumbers needed to man existing and future construction projects.
15 See Declaration of Trish Black, filed herewith.

16 The CAC put the appeals of the Administrator's Decision on its agenda for its regular meeting
17 set for July 26, 2001. The CAC has seventeen members, and a quorum of nine is necessary for binding
18 decisions. Eleven members were present at the July 26, 2001 meeting. PHCC discovered that four of
19 the members present were members of the California Apprenticeship Coordinators Association
20 ("CACA"). CACA actively participated in the hearing conducted by the Administrator, vigorously
21 advocating for Fresno Plumbing JATC's position. It also advocated for Fresno Plumbers JATC in a
22 brief to the CAC. Counsel for PHCC requested in open session that the four commissioners who were
23 members of CACA should recuse themselves from the CAC's deliberations and decision due to the
24 participation of their association in the proceedings under consideration. They refused.

25 PHCC-GSA-PUAC received the CAC Decision on August 9, 2001. See Declaration of Black
26 filed herewith. The decision affirmed the Decision of the Administrator of Apprenticeship, with the
27 added proviso that DAS should investigate PHCC to determine whether the training, education and
28 employment of the program's apprentices is being conducted lawfully. Thus, while PHCC may continue

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1 to provide training for apprentices residing outside of Sacramento who were enrolled prior to the
2 decision, non-Sacramento residents may no longer be enrolled. Furthermore, the CAC has ordered
3 PHCC to comply with its 1994 standards, even though they are totally out of compliance with the wage
4 and benefit requirements established by CAC regulations (e.g., it would require the payment of wages
5 and benefits to apprentices far below the level they are currently paid). PHCC has sought relief from
6 the CAC by way of request for clarification, but no response has been received. See Declaration of
7 Brown.

8 ARGUMENT

9 1. THE STANDARD FOR A STAY OF THE AGENCY DECISION.

10 Under Code of Civil Procedure § 1094.5(g), an affected party may obtain a stay of the agency
11 decision pending final judgment on the Writ of Mandate, provided the public interest will not be
12 adversely affected. Specifically, Code Civ. Proc. § 1094.5(g) states—

13 “Except as provided in subdivision (h), the court in which proceedings
14 under this section are instituted may stay the operation of the
15 administrative order or decision pending the judgment of the court . . .
however, no such stay shall be imposed or continued if the court is
satisfied that it is against the public interest.”

16 Subdivision (h) provides for a different standard for imposition of a stay in cases where the decision of
17 a state-wide agency was made after hearing required by statute to be conducted under the Administrative
18 Procedures Act, conducted by the agency itself or an administrative law judge on the staff of the Office
19 of Administrative Hearings. In those cases, a stay can be granted only upon a showing that the public
20 interest will not suffer, and that the agency is unlikely to prevail on the merits in the writ action. In this
21 case, however, there is no statutory requirement that the CAC’s hearing be conducted under the
22 Administrative Procedure Act. Therefore, the only showing necessary for a stay to be granted is that
23 the public interest will not suffer by virtue of a stay.

24 2. A STAY WOULD NOT BE CONTRARY TO THE PUBLIC INTEREST.

25 As noted in the factual summary, PHCC-GSA-PUAC operates its Plumbers Apprenticeship
26 Program for its members located throughout the State of California. It has training centers with local
27 education agency sponsors in the Counties of Sacramento, Alameda, Contra Costa, San Mateo, Marin,
28 Riverside and Kern. Recruitment of apprentices for this program is conducted on a state-wide basis, and

1 apprentices are enrolled without regard to their county of residence. These state-wide operations are in
2 strict conformance with the apprenticeship standards approved by the Division of Apprenticeship
3 Standards in 1998. Classroom instruction for the program is conducted on the same academic year basis
4 as the public school agencies who sponsor the various training centers. Therefore, apprentices enrolled
5 in the Spring and Summer months of 2001, are scheduled to begin their classroom instruction at the
6 beginning of September 2001.

7 The CAC's Decision received on August 9, 2001, has thrown the program into turmoil. The
8 CAC Decision does permit PHCC-GSA-PUAC to continue apprenticeship training for apprentices
9 enrolled prior to the tentative Decision of the Administrator of Apprenticeship (December 11, 2000).
10 However, apprentices who reside outside the County of Sacramento and who were enrolled with the
11 approval of DAS prior to the CAC Decision but after the preliminary Decision of the Administrator of
12 Apprenticeship are in a state of limbo. Can PHCC-GSA-PUAC provide these enrolled apprentices with
13 the promised training commencing in September? There are approximately 85 apprentices who fall into
14 this category and whose interests would be adversely affected if the stay is not granted. See Declaration
15 of Black.

16 A stay in this case would clearly promote the public interest in fostering and promoting the
17 availability of apprenticeship training. For some years now, the construction industry in general and the
18 plumbing trade specifically have endured a severe shortage of qualified tradesmen that are essential for
19 the continued prosecution of both residential and commercial construction in the State of California.
20 Contractor members of PHCC have found themselves advertising for plumbers throughout the Western
21 United States, and have been unable to meet their hiring needs. The demand for additional apprentices
22 among PHCC members is at an all time high. Thus, the continued enrollment and training of apprentices
23 by PHCC-GSA-PUAC pending final judgment of this court would clearly promote the public interest.

24 There is no record evidence of any adverse effect on the public interest should the stay be
25 granted. At no time in the administrative proceedings was there any question as to the adequacy of the
26 training being provided to apprentices enrolled in PHCC's program. Indeed, the record shows that the
27 program has been graduating an increasing number of apprentices for each year that it has been in
28 operation. Even the CAC acknowledges that there is no performance based reasons to prohibit PHCC

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1 from continuing to provide training throughout the state for those apprentices enrolled prior to the
2 adverse agency Decision. Accordingly, there can be no showing that a stay of the Decision would be
3 against the public interest.

4 Finally, the public policy of both the United States and the State of California is to foster and
5 promote the availability of apprenticeship training. The federal statute, known as the Fitzgerald Act,
6 and with which California apprenticeship law must conform, was enacted "to encourage the
7 establishment of modern apprenticeship programs to be administered by the Federal Department of
8 Labor." Southern California Chapter ABC, JAC v. California Apprenticeship Council (1992) 4 Cal.4th
9 422, 432. "Wider availability of apprenticeship benefits would serve the purposes of the state
10 [apprenticeship] statute: addressing the need for such programs by potential apprentices and society as
11 a whole." Southern California Chapter ABC, JAC v. California Apprenticeship Council (1991) 2
12 Cal.Rptr.2d 237, 238, affd. 4 Cal.4th 422. State law, properly interpreted, "intends to encourage the
13 wider provision of apprenticeship benefits . . . it is completely inconsistent with the statute to allow the
14 Council to deny apprenticeship benefits where there is a need for them, merely because the new
15 programs might compete with existing programs and pay lower, non-union scale wages. (fn. omitted).
16 The state law remains neutral as between union and non-union plans; it looks to a societal need and does
17 not purport to insert itself into the conflicts between unions and employers." Id. at 248. In short, it is
18 the public policy of both the United States and the State of California to promote the availability of
19 apprenticeship training. Therefore, the public interest would be served by staying the CAC Decision
20 in this case so that recently enrolled apprentices will be able to receive continued training pending the
21 final judgment of this court.

22 **3. LIKELIHOOD OF SUCCESS ON THE MERITS.**

23 Even though there is no statutory requirement of a showing of likelihood of success on the
24 merits, PHCC-GSA-PUAC contends that once the court has reviewed the record and pertinent
25 authorities, it will conclude that the CAC Decision cannot stand on numerous grounds. PHCC will be
26 able to establish that there was no fair trial, that the CAC acted in excess of its jurisdiction, that the CAC
27 did not proceed in the manner required by law, and that its Decision constituted a prejudicial abuse of
28 discretion. These all constitute grounds for setting aside an agency decision under Code Civ. Proc. §

1 1094.5(b). A summary of some of PHCC's arguments in this regard follows.

2 a. No Fair Trial.

3 Initially, CAC failed to provide PHCC-GSA-PUAC with a fair trial. The CAC is
4 composed of seventeen commissioners appointed by the Governor. Labor Code § 3070. Nine
5 commissioners constitute a quorum necessary to render decisions. At the July 26, 2001 CAC meeting
6 where the Decision at issue was rendered, eleven commissioners were present. However, four of the
7 commissioners were members of the California Apprenticeship Coordinators Association ("CACA").
8 See Declaration of Prager. CACA appeared in this case before both the Administrator of Apprenticeship
9 and the CAC, advocating on behalf of Fresno Plumbers JATC and against PHCC-GSA-PUAC. See
10 Brief of Amicus CACA to CAC attached to Declaration of Brown where CACA states at p. 2, "The
11 members of CACA have familiarized themselves with the issues presented in both the PHCC and IRCC
12 cases, are aware of the Director's Decisions currently under consideration by the CAC Appeals Panel
13 and voted to fully support the positions of Charging Parties in these matters."

14 At the CAC hearing, counsel for PHCC-GSA-PUAC noted that at least four commissioners of
15 the then sitting members of CAC on July 26 were CACA members, or members of organizations which
16 were CACA members, and requested that such CAC commissioners recuse themselves from all
17 consideration of the matter for two reasons: conflict of interest, and because without such members
18 participating in the consideration and voting, the CAC would not have had a quorum entitling it to act
19 at that time on the CAC Appeals Panel Decision. None of the CAC commissioners recused themselves,
20 and they proceeded to participate in the hearing, and voted to affirm the CAC Appeals Panel Decision
21 adverse to the interests of PHCC-GSA-PUAC. See, Declaration of Prager.

22 The commissioners' refusal to recuse themselves constituted an abuse of discretion to PHCC's
23 substantial prejudice. They were clearly not neutral decision makers. Rather, they were biased decision
24 makers having caused their association to advocate a position contrary to PHCC's interest in the matter
25 before them. Their participation also placed them in the position of influencing the votes of other
26 commissioners over a matter which they had prejudged. Finally, if they had recused themselves as due
27 process required, the CAC would not have had a quorum. Therefore, the CAC Decision is actually a
28 nullity.

1 An impartial decision maker is a fundamental part of the due process to which PHCC-GSA-
2 PUAC was entitled in this proceeding. PHCC did not receive a fair hearing. Accordingly, the CAC
3 Decision must be overturned.

4 b. The CAC Lacked Jurisdiction.

5 The CAC also acted in excess of its jurisdiction in this case. As the Administrator's
6 Decision indicates, there is no question as to the validity of PHCC's initial Apprenticeship Program
7 Standards. They were approved by DAS on December 20, 1993 and approved by the CAC in July 1994.
8 Article VI of the CAC approved standards states that "The responsibilities of the PUAC shall be to:
9 .. 9. adopt changes to these standards, as necessary, subject to the approval of the parties hereto and the
10 Chief of the Division of Apprenticeship Standards." Thus, the CAC delegated approval power for
11 changes to the standards to the program sponsor (PHCC-GSA-PUAC) and the Chief of DAS.

12 Subsequently, and based on the instructions of the Chief of DAS, PHCC-GSA-PUAC sought a
13 change to its standards, expanding the geographic area within which training and recruitment would take
14 place. This change in the standards was approved by the Acting Chief of DAS on January 22, 1998,
15 consistent with its past practices since at least 1993. Thus, the revised standards were adopted in
16 accordance with the express delegation of authority granted by CAC in 1994, and the CAC was without
17 jurisdiction to overrule its prior order retroactively.

18 c. Prohibiting Enrollment of Non-Sacramento Residents Unlawful.

19 The CAC also acted in excess of its jurisdiction and contrary to law when it ordered that
20 PHCC-GSA-PUAC not enroll any apprentice that did not reside in Sacramento County. Even the
21 Administrator of Apprenticeship and the CAC (through adoption of the Administrator's Decision)
22 concedes that there is no statutory authority for such a limitation. See fn. 25 of the Administrator's
23 Decision attached to the Declaration of Brown: "Some testimony was elicited during the hearing about
24 the location of the new apprentice at the time the written application or argument by the apprentice was
25 signed. The testimony was inconclusive. In addition, neither Labor Code § 3078 nor § 3079 or any
26 other provision of the Labor Code places restrictions on the locations of the parties to the agreement,
27 at the time of signing of the agreement."

28 Not only is there no statutory authority for the CAC's order prohibiting PHCC from enrolling

1 any apprentice who resides outside of Sacramento, but it is contrary to fundamental constitutional rights
2 of the potential apprentices. The United States Constitution, through the Privileges and Immunities
3 Clause and the Commerce Clause, prohibits any State or municipality from enforcing laws or ordinances
4 which discriminate on the basis of state citizenship or municipal residency. U.S. Const. Art. 4, § 2; U.S.
5 Const. Art. 1 § 8; See also Hicklin v. Orbeck 437 U.S. 518, 524; United Building and Construction
6 Trades Council v. City of Camden 465 U.S. 208, 215 (1984). In the absence of a "substantial reason"
7 for discriminating against non-residents, a law or ordinance will be invalidated as unconstitutional.
8 Hicklin v. Orbeck, *supra*, 437 U.S. 525-26.

9 California has also invalidated laws by cities, counties or political subdivisions which
10 discriminate against persons who do not reside in a certain district or county. See County of Alameda
11 v. City of San Francisco (1971) 19 Cal.App.3d 750 (city tax on non-San Francisco residents is a
12 violation of commerce clause of Federal Constitution). Since there is no specific State Constitutional
13 provision making this type of discrimination illegal, courts have applied the Federal Constitution. *Id.*
14 at 754. The distinction between interstate discrimination, and intercity discrimination "is in reality of
15 little significance" since the same constitutional concerns and safeguards apply. *Id.* at 754.

16 The basic policy underlying the commerce clause of the Federal
17 Constitution—to preserve the free flow of commerce among the states to
18 optimize economic benefits—is equally applicable to intercity commerce
19 within the state.

19 County of Alameda v. County of San Francisco (1971) 19 Cal.App.3d 750, 754 (emphasis added).

20 The CAC, acting under state authority, has unconstitutionally ordered the PHCC-GSA-PUAC
21 apprenticeship program to cease recruiting and/or enrolling any employees who are not residents of
22 Sacramento County. The order is clearly discriminatory against non-Sacramento County residents, and
23 prevents the free flow of commerce throughout California. Furthermore, the CAC has not offered a
24 substantial reason justifying the discriminatory order. In the absence of a substantial reason, CAC's
25 order is an arbitrary discriminatory act against non-Sacramento residents and must be invalidated.

26 d. The CAC Should Be Estopped From Nullifying DAS Approval of Revised
27 Standards.

28 In its Decision, CAC (thru adoption of the Administrator's Decision) concedes that the

1 principles of estoppel apply to actions taken by DAS in this case, and that PHCC reasonably relied on
2 DAS's acquiescence in its enrollment and training of apprentices outside of Sacramento County to its
3 detriment. However, for reasons unknown, the CAC applied the doctrine of estoppel to prevent adverse
4 consequences for existing PHCC apprentices, but did not apply it to avoid detriment to the program
5 itself. Indeed, neither the Administrator nor the CAC even addressed PHCC's estoppel argument. Such
6 selective application of the rule of law is clearly an abuse of discretion.

7 The facts in this case make out a compelling case for the application of the doctrine of estoppel
8 against the CAC's retroactive disapproval of PHCC's state-wide standards. Under the governing statute,
9 DAS is the agency charged with administering apprenticeship law in California Labor Code § 3073.
10 Pursuant to this authority, DAS Chief Gail Jesswein issued a memorandum to his staff and the public
11 in 1993 which stated in material part--

12 The statement of the geographic area within which the Standards apply,
13 8 C.C.R. § 212(b)(2), is not a limitation as to the area within which an
14 apprentice may be employed. It is required for program to be approved
15 in order to monitor two federally required criteria--recruitment and
related and supplemental instruction. Thus, the statement of the
program's geographic area in its Standards does not limit the area in
which recognized apprentices can work.

16 * * *

17 Therefore, in existing Standards, a statement of geographic area for
18 recruitment, and within which RS&I classroom training occurs, should
19 be updated when the area of those activities expands. It is optional to
20 change the Standards to specify the out-of-area range within which
apprentices may be offered a dispatch to OJT work, as contractors
secure jobs. (Emphasis added).

21 See Administrator's Decision, pp. 4-5 attached to Brown Declaration. PHCC wished to expand the
22 geographical reach of its recruitment and training and sought out the advice of DAS apprenticeship
23 consultant Len Viramontes.¹ Mr. Viramontes advised PHCC-GSA-PUAC on the proper procedures to
24 follow in seeking expansion and informed PHCC-GSA-PUAC that it was DAS policy to process
25 geographic expansions as revisions to existing programs. (Brown Declaration, 5/17/00 TR at 177:1-6;
26 7/19/00 TR at 50:9-15; 55:5-56:3). Over a sixteen month period, Mr. Viramontes himself drafted

27 _____
28 ¹Viramontes had been employed by DAS as an apprenticeship consultant or senior consultant
for almost 30 years. (Brown Declaration; 7/19/00 TR at 32:16-33:8).

1 numerous revisions to PHCC-GSA-PUAC's standards and submitted them to DAS headquarters seeking
2 to expand PHCC-GSA-PUAC's area of coverage through a revision to its existing apprenticeship
3 standards. (Brown Declaration, 7/19/00 TR at 12:1-13:2; 50:9-52:16).

4 Acting DAS Chief Rita Tsuda², who approved PHCC's revised standards in January 1998,
5 confirmed that it was the policy and practice of DAS to handle a geographic area change as a revision
6 to an existing program. (5/17/00 TR at 84:15-25). Ms. Tsuda testified that DAS had been handling
7 geographic area expansions as revisions since at least 1993, when the abovementioned Jesswein
8 enforcement policy issued. (5/17/00 TR at 101:6-18). Ms. Tsuda noted that, consistent with DAS
9 policy, PHCC-GSA-PUAC's expansion was processed as a revision, as was the geographic expansion
10 of the Independent Roofing Contractor's ("IRCC") apprenticeship program. (5/17/00 TR at 101:19-
11 102:9). Mr. Viramontes corroborated Ms. Tsuda's testimony. He testified that he consulted with Ms.
12 Tsuda regarding how to process PHCC-GSA-PUAC's expansion and she told him that it would not have
13 to go through the new program approval process because it was an expansion, not a new program.
14 (7/19/00 TR at 54:18-55:9). Mr. Viramontes also testified that, throughout his long tenure as a DAS
15 Consultant, he has processed a number of geographic area expansions as revisions to existing programs.
16 (7/19/00 TR at 52:4-53:21).

17 It is undisputed that not only was the above-stated policy of DAS communicated to
18 representatives of PHCC-GSA-PUAC, but it was a representative of DAS, Len Viramontes, who
19 actually drafted the revision to PHCC-GSA-PUAC's standards and then processed the expansion as a
20 revision as opposed to a new program. It would be inequitable under these circumstances for CAC to
21 overrule that policy retroactively and revoke DAS approval of PHCC-GSA-PUAC's state-wide program,
22 especially because the law has changed in the interim and it would be impossible for PHCC-GSA-PUAC
23 to establish an approved state-wide program at this juncture.

24
25 ²Ms. Tsuda was the Deputy Chief of DAS and had worked for DAS for 27 years. (5/17/00
26 TR at 80:1-7). She was appointed to be the Acting Chief of DAS on October 31, 1997 by John
27 Duncan, then-Acting Director of DIR. As Acting Chief, Ms. Tsuda was vested with the full
28 authority and responsibility of the Chief of DAS, including the authority to approve new and revised
apprenticeship program standards. (5/17/00 TR at 83:11-84:7). At all times from 1996 through
January 1998, Ms. Tsuda was authorized to approve revisions to standards, either as the Deputy
Chief or as the Acting Chief. (5/17/00) TR at 84:10-14).

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1 The Supreme Court has held that the acts of one public agency will bind another public agency
2 where there is privity or an identity of interests between the agencies. Lusardi Construction Co. v.
3 Aubry (1992) 1 Cal.4th 967, 995. Indisputably, there is an identity of interests between CAC and DAS
4 such that the acts of DAS bind CAC in this matter. Thus, CAC must be estopped from overruling the
5 policies of DAS retroactively and from revoking DAS approval of PHCC-GSA-PUAC's 1998 Standards.

6 There are four elements necessary to apply the doctrine of estoppel:

7 First, the party to be estopped must have been aware of the facts. Second, that party
8 must either intend that its act or omission be acted upon, or must so act that the party
9 asserting estoppel has a right to believe it was intended. Third, the party asserting
10 estoppel must be unaware of the true facts. Fourth, the party asserting estoppel must
11 rely on the other party's conduct, to its detriment. [Citation]. Even when these elements
12 are present, estoppel will not be applied against the government if to do so would nullify
13 a strong rule of policy adopted for the benefit of the public.

14 Id. at 994.

15 Not only are all four requisite elements present in this case, but also, if estoppel is not applied herein,
16 the public policy underlying federal and state apprenticeship statutes will be nullified.

17 First, it is clear that both Mr. Viramontes and Ms. Tsuda were familiar with the applicable laws
18 and knew that there was a possibility that PHCC-GSA-PUAC's expansion into all 58 counties in
19 California could be construed as a new program for approval purposes. As Mr. Viramontes testified,
20 he was concerned that using a DAS-27 to process PHCC-GSA-PUAC's expansion would trigger the new
21 program approval procedure, yet he reassured PHCC-GSA-PUAC that, according to the Acting Chief,
22 they would not have to follow new program approval procedures to expand. (7/19/00 TR at 54:18-56:3).

23 Second, there can be no argument but that DAS intended PHCC-GSA-PUAC to act upon its
24 advice. One of the factors to be considered in a claim of estoppel against a public agency is whether it
25 purports to advise and direct or merely to inform and respond to inquiries. Lee v. Board of
26 Administration of PERS (1982) 130 Cal.App.3d 122, 134. Not only did Mr. Viramontes advise and
27 direct PHCC-GSA-PUAC's representatives regarding how to proceed with the expansion, he did it for
28 them. (7/19/00 TR at 50:9-15). Mr. Viramontes testified that he filled out all the forms, including the
initial DAS-24, and he changed PHCC-GSA-PUAC's standards and selection procedures to reflect the
entire state of California as the area of coverage. (7/19/00 TR at 50:24-52:16). Later, Mr. Viramontes
informed PHCC that DAS Headquarters wanted PHCC-GSA-PUAC to submit a DAS-27, which Mr.

1 Viramontes then completed and submitted. (7/19/00 TR at 55:10-21).

2 Third, there is no evidence that PHCC-GSA-PUAC was aware of what CAC now alleges to be
3 the true facts, i.e. that the expansion of the apprenticeship program statewide was effectively a new
4 program subject to the approval requirements set forth in Labor Code section 3075 and 8 C.C.R. section
5 212.2. The evidence indicates instead that the representatives of PHCC-GSA-PUAC were lay people
6 who looked to DAS for guidance regarding the applicable law.

7 Fourth, there is no dispute that Respondents reasonably relied on the advice of DAS in seeking
8 to expand their program through a revision of the existing standards instead of going through the new
9 program approval process. They sought and received the advice of Mr. Viramontes and relied on him
10 completely to process the expansion in whatever way he deemed appropriate and lawful. Such reliance
11 was imminently reasonable considering that DAS is charged by law with the administration of
12 California's apprenticeship statutes. Labor Code § 3073.

13 Unquestionably, Respondents' reliance on the advice of DAS will be to its detriment if CAC
14 overrules DAS policy retroactively and revokes the 1998 approval of their state-wide program because,
15 whereas they most certainly could have gotten their statewide expansion approved as a new program
16 at that time, it would be virtually impossible for them to do so now because of recent changes in the law,
17 specifically, the revision of Labor Code section 3075.

18 In the 1996-1998 time frame, when PHCC-GSA-PUAC sought and ultimately succeeded in
19 expanding its program statewide, Labor Code section 3075 read, in pertinent part, as follows: "Programs
20 may be approved by the Chief [of DAS] in any trade in the state or in a city or trade area, whenever the
21 apprentice training needs justifies the establishment. . ." However, effective January, 2000, Labor Code
22 section 3075 was amended to read:

23 (b) For purposes of this section, the apprentice training needs in the
24 building and construction trades shall be deemed to justify the approval
25 of a new apprenticeship program only if any of the following conditions
26 are met:

27 (1) There is no existing apprenticeship program approved under this
28 chapter serving the same craft or trade and geographic area;

(2) Existing apprenticeship programs approved under this chapter that
serve the same craft or trade and geographic area do not have the
capacity, or neglect or refuse, to dispatch sufficient apprentices to

1 qualified employers at public works sites who are willing to abide by the
2 applicable apprenticeship standards;

3 (3) Existing apprenticeship programs approved under this chapter that
4 serve the same trade and geographic area have been identified by the
5 California Apprenticeship Council as deficient in meeting their
6 obligations under this chapter.

7 Given the scope of the amendments to section 3075, PHCC-GSA-PUAC would be unable to secure DAS
8 approval to operate statewide at this juncture if CAC revokes the 1998 approval and its program is
9 confined to Sacramento County³.

10 Given the foregoing, it would be fundamentally unfair to punish PHCC-GSA-PUAC and its
11 apprentices enrolled in its program outside Sacramento for reasonably relying on and following the
12 advice of DAS if said advice is deemed to be incorrect years after the fact. In addition, from a public
13 policy standpoint, estoppel must be applied in this instance to further the strong policies underlying
14 federal and state apprenticeship laws. Two of the most important policies underlying the National
15 Arbitration Act and the Shelley-Maloney Act are to encourage the establishment of modern
16 apprenticeship programs and to safeguard the welfare of apprentices. Southern California ABC v.
17 California Apprenticeship Council (1992) 4 Cal.4th 422, 432; 29 U.S.C. § 50; Cal. Labor Code § 3073.
18 If CAC is not estopped from retroactively modifying DAS policy and revoking PHCC-GSA-PUAC's
19 ability to operate statewide, both policies will be nullified. Such a ruling would discourage the
20 establishment of modern apprenticeship programs by confining PHCC-GSA-PUAC's operations to
21 Sacramento County and it would impede upon the welfare of the hundreds of apprentices who could in
22 the future enroll in the program outside Sacramento County.

23 ///

24 ///

25 ///

26 ³The U.S. Department of Labor, Office of Apprenticeship Training, Employer and Labor
27 Services ("ATELS"), has taken note of California's recent efforts to restrict apprenticeship
28 opportunities, and "preliminarily determined [Labor Code] § 3075(b) and proposed [8 C.C.R.]
Section 212.05 are contrary to the mandate of the NAA [National Apprenticeship Act] and its
implementing regulations." See Swope letter attached to Declaration of Black.

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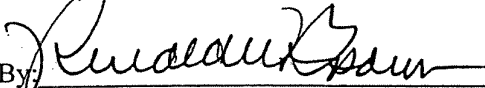
CONCLUSION

For all the foregoing reasons the Court is urged to stay the Decisions of the Administrator and the CAC pending final judgment in this matter.

Dated: August 17, 2001

Respectfully Submitted,

COOK, BROWN & PRAGER, LLP

By: 

RONALD W. BROWN

Attorneys for PHCC-GSA and PHCC-GSA PUAC

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2 JOHN W. PRAGER, ESQ. (Bar No. 049707)
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8 Attorneys for Petitioners, PHCC OF THE GREATER
9 SACRAMENTO AREA and PHCC OF THE GREATER
10 SACRAMENTO AREA PLUMBERS UNILATERAL
11 APPRENTICESHIP COMMITTEE

12 SUPERIOR COURT
13 COUNTY OF SACRAMENTO

14 PHCC OF THE GREATER SACRAMENTO)
15 AREA and PHCC OF THE GREATER)
16 SACRAMENTO AREA PLUMBERS)
17 UNILATERAL APPRENTICESHIP)
18 COMMITTEE,)

19 Petitioners,

20 v.

21 CALIFORNIA APPRENTICESHIP
22 COUNCIL,

23 Respondents.

24 FRESNO AREA PLUMBERS, PIPE AND
25 REFRIGERATION FITTERS JATC,

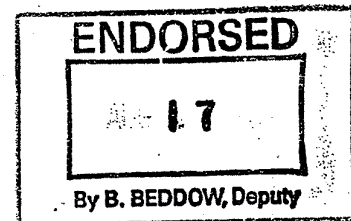
26 Real Parties In Interest.

Case No. 01CS01172

DECLARATION OF RONALD W.
BROWN IN SUPPORT OF
APPLICATION FOR STAY

27 I, RONALD W. BROWN, hereby declare as follows:

28 I and my firm, Cook, Brown & Prager, LLP, are attorneys for PLUMBING, HEATING,
COOLING CONTRACTORS of the GREATER SACRAMENTO AREA ("PHCC-GSA") and PHCC-
GSA PLUMBERS UNILATERAL APPRENTICESHIP COMMITTEE ("PHCC-GSA-PUAC") in the
above captioned matter. We have represented this association and its affiliated apprenticeship
committee throughout the administrative proceedings which are subject to the Petition for Writ of



1 Mandate filed herewith. In connection with its Petition for Writ of Mandate, Petitioners also seek a Stay
2 of the Administrative Decision issued by the California Apprenticeship Council ("CAC"). Documents
3 which are relevant to the Court's determination on whether to grant the requested stay are as follows;

4 1. The "Enforcement Policy" issued by Gail W. Jesswein, Chief of the Division of
5 Apprenticeship Standards ("DAS") dated July 14, 1993, is attached hereto as Exhibit 1.

6 2. The Apprenticeship Standards of the PHCC-GSA-PUAC approved by the DAS and the
7 CAC are attached hereto as Exhibit 2.

8 3. The Apprenticeship Standards of the PHCC-GSA-PUAC approved by DAS on January
9 22, 1998, are attached hereto as Exhibit 3.

10 4. The brief of Amicus Curiae California Apprenticeship Coordinator's Association to the
11 CAC dated April 30, 2001, with which I was served, is attached hereto as Exhibit 4.

12 5. The Decision of the Administrator of Apprenticeship dated December 11, 2000, is
13 attached hereto as Exhibit 5.

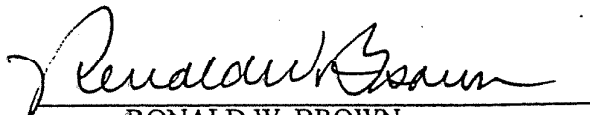
14 6. The Decision of the California Apprenticeship Council dated July 26, 2001, is attached
15 hereto as Exhibit 6.

16 7. The Request for Clarification which I served on the CAC on August 3, 2001, is attached
17 hereto as Exhibit 7.

18 8. The following pages from the transcript of the Administration Hearing held on May 17,
19 2000 and July 19, 2000 are attached hereto at Exhibit 8: 5/17/00 - pp. 80-84, 101-102, 177; 7/19/00 -
20 pp. 12-13, 32-33, 50-56.

21 I declare under penalty of perjury that the foregoing is true and correct, and that if asked, I could
22 and would testify competently thereto in a court of law.

23 Executed this 15th day of August, 2001 at Sacramento, California.

24
25 
26 RONALD W. BROWN
27
28

08-03-01

1 RONALD W. BROWN, ESQ. (Bar No. 107340)
2 JOHN W. PRAGER, ESQ. (Bar No. 049707)
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8 Attorneys for Respondents, PHCC OF THE GREATER
9 SACRAMENTO AREA and PHCC OF THE GREATER
10 SACRAMENTO AREA PLUMBERS UNILATERAL
11 APPRENTICESHIP COMMITTEE

12 BEFORE THE
13 CALIFORNIA APPRENTICESHIP COUNCIL.

14 FRESNO AREA PLUMBERS, PIPE AND
15 REFRIGERATION FITTERS JATC,

16 Charging Party, Appellee

17 v.

18 PHCC OF THE GREATER SACRAMENTO
19 AREA and PHCC OF THE GREATER
20 SACRAMENTO AREA PLUMBERS
21 UNILATERAL APPRENTICESHIP
22 COMMITTEE,

23 Respondents, Appellants.

No. 98-17

**RESPONDENTS' REQUEST FOR
CLARIFICATION OF PROPOSED CAC
DECISION**

24 1. Respondent recently obtained a draft copy of what it understands is (or will be) the
25 Decision of the California Apprenticeship Council in the above referenced matter. Since we have not
26 yet been served with the final Decision, we cannot be certain as to its contents. Nonetheless, there are
27 at least two ambiguities in the preliminary Decision for which PHCC-GSA-PUAC seeks clarification.
28 2. First is the scope of the Order requiring PHCC-GSA-PUAC to "operate its program only
under its original standards as approved by the Council on July 29, 1994." These original standards
contain wage and benefit rates far below the rates adopted and approved by DAS in the 1998 standards.
Indeed, the rates are completely out of conformance with the rates required under 8 C.C.R. § 208. Thus,

///

1
RESPONDENTS' REQUEST FOR CLARIFICATION OF CAC DECISION

EXHIBIT

7

1 the CAC Decision purports to require the PHCC-GSA-PUAC to operate contrary to the CAC's own
2 regulations.

3 3. Another provision of the 1994 standards necessarily revised in the 1998 standards that
4 is purportedly nullified by the CAC Decision is the identification of schools through which related and
5 supplemental instruction ("RSI") will be provided. Labor Code § 3074 and the CAC regulations require
6 the provision of such RSI for apprentices wherever they may be employed. Depriving PHCC-GSA-
7 PUAC of the ability to provide for RSI through the various LEAs with which it has agreements will
8 threaten the viability of training yet to be provided to apprentices located outside of Sacramento County,
9 even though such training is mandated under the CAC Decision. See Paragraph 3 of Decision which
10 requires that such training be "in accordance with the law."

11 4. Thus, PHCC-GSA-PUAC seeks an Order from the Council clarifying that its Decision
12 was intended to nullify only that component of the 1998 standards which served to expand the
13 geographic area beyond Sacramento County (Block 2 of Extract). Barring such a clarification, the
14 Council Decision will require PHCC-GSA-PUAC to operate its program unlawfully and contrary to the
15 CAC regulations.

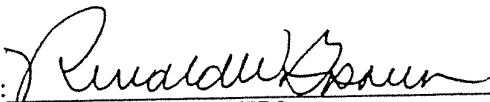
16 5. The second clarification required is the effective date of the Decision. The Director's
17 Decision issued on December 11, 2000. However, the Decision was appealed by both Charging Party
18 and Respondent to the CAC, and we have yet to be served with the final CAC Decision. This process
19 is governed by Labor Code §§ 3081-3083. Under the statutes, the Administrator of Apprenticeship is
20 to hold a hearing and issue a decision. If neither Party appeals to the CAC, the Administrator's decision
21 becomes the decision of the CAC. However, if there is an appeal (as was the case here), the CAC is
22 required to make an independent decision based on its review of the entire record. Thus, the statutory
23 scheme clearly contemplates that the exclusive authority for determinations on complaints within its
24 coverage is vested in the CAC, not the Administrator of Apprenticeship. Accordingly, the effective date
25 of the Decision overturning DAS's approval of PHCC-GSA-PUAC's 1998 standards cannot be earlier
26 than the final Decision of the CAC (with which the Parties have yet to be served.) It follows that the
27 part of the Decision authorizing PHCC-GSA-PUAC to continue training enrolled apprentices who do
28 not reside in Sacramento County should likewise be effective on the date of service of the final CAC

1 Decision, and that all apprentices enrolled prior to that date should be covered within the authorization.
2 6. We request that clarification of the foregoing issues be provided by the CAC promptly
3 so that Respondent has clear guidance on how it is to implement the Decision of the CAC.
4

5 Dated: August 3, 2001

Respectfully Submitted,

COOK, BROWN & PRAGER, LLP

7
8 By: 
9 RONALD W. BROWN
Attorneys for PHCC-GSA and PHCC-GSA PUAC

1 *Fresno Area Plumbers Pipe and Refrigeration Fitters JATC v. PHCC of the Greater Sacramento Area, et al*
2 California Apprenticeship Council No. 98-17

3 **PROOF OF SERVICE**

4 I am employed in the County of Sacramento, State of California. I am over the age of 18 and
5 not a party to the within action; my business address is 555 Capitol Mall, Suite 425, Sacramento, CA
6 95814.

7 On August 3, 2001, I served the foregoing document(s) described as:

8 **RESPONDENTS' REQUEST FOR CLARIFICATION OF PROPOSED CAC DECISION**
9 on the parties listed below:

10 Stephen J. Smith, Director
11 Department of Industrial Relations
12 CA Apprenticeship Council
13 455 Golden Gate Avenue
14 San Francisco, CA 94105

Fred Lonsdale
Counsel, Department of Industrial Relations
Office of the Director - Legal Unit
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94105

15 Martin Fassler, Hearing Officer
16 Department of Industrial Relations
17 Office of the Director - Legal Unit
18 455 Golden Gate Avenue, 9th Floor
19 San Francisco, CA 94105

Lawrence H. Kay, Esq.
Stanton, Kay & Watson
7801 Folsom Blvd., Suite 350
Sacramento, CA 95826

20 John J. Davis, Jr., Esq.
21 Davis, Cowell & Bowe
22 100 Van Ness Avenue, 20th floor
23 San Francisco, CA 94102

California Apprenticeship Council
Department of Industrial Relations
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

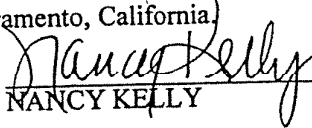
24 (BY OVERNIGHT MAIL) I caused such document(s) to be sent by overnight mail by using
25 Federal Express Mail (Airbill No. _____). Under that practice would be deposited that
26 same day in a Federal Express drop box for delivery the next business day.

27 ☒ (BY U.S. MAIL) I placed each such envelope(s), with postage thereon fully prepaid for First
28 Class Mail, for collection and mailing at Sacramento, California, following ordinary business
practices. I am "readily familiar" with Cook, Brown & Prager's practice of collection and
processing correspondence for mailing. Under that practice it would be deposited with U.S.
postal service on that same day with postage thereon fully prepaid at Sacramento, California in
the ordinary course of business. I am aware that on motion of the party served, service is
presumed invalid if postal cancellation date or postage meter date is more than one day after
date of deposit for mailing in affidavit.

(BY FACSIMILE) I served such documents by facsimile transmission to the person at the
facsimile number referenced above.

(BY PERSONAL SERVICE) I caused such document(s) to be delivered by hand to the offices
of the addressee.

I declare under penalty of perjury under the laws of the State of California that the above is true
and correct. Executed August 3, 2001, at Sacramento, California.


NANCY KELLY